

## RAILWAYS ACT 1993

### 2023 PERIODIC REVIEW

#### REVIEW NOTICE: OPEN ACCESS PASSENGER TRACK ACCESS AGREEMENTS

TO:

- (1) the persons whose names are set out in Part 1 of Annex 1 to this Review Notice (the “**Train Operators**”);
- (2) the persons whose names are set out in Part 2 of Annex 1 to this Review Notice;
- (3) Network Rail Infrastructure Limited (“**Network Rail**”); and
- (4) the Secretary of State for Transport, the Scottish Ministers and the Treasury,

together the “**Addressees**”.

#### 1 General

1.1 This review notice (the “**Review Notice**”) is given in accordance with paragraph 4 of Schedule 4A to the Railways Act 1993 (the “**Act**”).

1.2 The Office of Rail and Road (“**ORR**”) has undertaken a review of:

(a) the amounts payable by Network Rail and each of the Train Operators to each other under each of the track access agreements listed in Annex 1 to this Review Notice (the “**Track Access Agreements**”); and

(b) the times at which, and the manner in which, those amounts are payable,

(the “**Review**”).

1.3 ORR’s conclusions on the Review, and its reasons for those conclusions, are:

(a) set out in a series of documents referenced in the document entitled “**PR23 final determination: Consolidated list of decisions – England & Wales and Scotland**” and published by ORR on 31 October 2023; and

(b) hereby incorporated into this Review Notice.

1.4 By publishing this Review Notice and serving it on each of the Addressees, ORR is initiating the implementation of the Review.

## **2 Proposed Relevant Changes**

2.1 For or in connection with giving effect to ORR's conclusions on the Review, ORR proposes to direct the parties to each of the Track Access Agreements to amend their Track Access Agreement on the terms specified in Annexes 2 and 3 to this Review Notice (the "**proposed relevant changes**").

2.2 ORR proposes that, subject to paragraph 3, the proposed relevant changes will come into operation on and from 1 April 2024.

## **3 Regulated Amendments**

3.1 Subject to paragraph 3.2 below, if, before the proposed relevant changes come into operation in relation to any Track Access Agreement, such Track Access Agreement is amended in a manner which is:

(a) approved by ORR under section 22 of the Act; or

(b) directed by ORR under section 22A or section 22C of the Act,

(each a "**regulated amendment**"), then:

(i) the proposed relevant changes shall come into operation in relation to that Track Access Agreement subject to the regulated amendments; and

(ii) if there is any conflict between the proposed relevant changes and the regulated amendments, the regulated amendments shall take precedence.

3.2 The following amendments will not be considered regulated amendments for the purpose of this Review Notice:

(a) amendments made to any provision within Schedule 7, other than Appendix 7C, of a Track Access Agreement under the Passenger Access (Short Term Timetable

and Miscellaneous Changes) General Approval 2023 which came into force on 15 May 2023; and

- (b) amendments made to any provision within Schedule 8 of a Track Access Agreement under the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2023 which came into force on 15 May 2023.

#### **4 Objections**

4.1 Subject to paragraph 4.2, any person specified in paragraph 4(4)(a) or (b) of Schedule 4A to the Act may make objections with respect to:

- (a) any of the proposed relevant changes; or
- (b) the date on which it is proposed that any such proposed relevant changes shall come into operation.

4.2 Any objection made under paragraph 4.1 must be:

- (a) made in writing;
- (b) received by ORR on or before 9 February 2024; and
- (c) addressed to ORR as follows:

Will Godfrey  
Office of Rail and Road  
25 Cabot Square  
London  
E14 4QZ

#### **5 Definitions and Interpretation**

5.1 In this Review Notice, unless the context otherwise requires:

- (a) references to “**this Review Notice**” include the Annexes to this Review Notice;

- (b) references to the singular include the plural and *vice versa*;
- (c) words and phrases defined in:
  - (i) the Act;
  - (ii) the Network Code (formerly known as the Railtrack Track Access Conditions 1995 (as amended)); or
  - (iii) each Track Access Agreement,shall have the same meanings in this Review Notice; and
- (d) any general rules of interpretation contained in:
  - (i) Condition A1 of the Network Code; or
  - (ii) each Track Access Agreement,shall also apply to this Review Notice.



**Will Godfrey**  
**Director of economics, finance and markets**  
**FOR AND ON BEHALF OF**  
**THE OFFICE OF RAIL AND ROAD**  
Dated 20 December 2023

## ANNEX 1

### TRAIN OPERATORS AND TRACK ACCESS AGREEMENTS

#### PART 1 (TRAIN OPERATORS)

<b>Train Operator Name</b> (collectively, the “ <b>Train Operators</b> ” and each a “ <b>Train Operator</b> ”).	<b>Train Operator Company Number</b>	<b>Original Date of Track Access Agreement</b>
East Coast Trains Limited	08765536	3 October 2016
Eurostar International Limited	02462001	31 October 2008
Grand Central Railway Company Limited	03979826	1 August 2014
Grand Union Trains No. 2 Limited	14653926	13 June 2023
Hull Trains Company Limited	03715410	17 March 2016
NYMR PLC	02490244	17 January 2007
South Yorkshire Supertram Limited	02634683	4 May 2018
West Coast Railway Company Limited	03066109	28 May 2020

**ANNEX 1**

**PART 2 (OTHER ADDRESSEES)**

South Yorkshire Mayoral Combined Authority

## ANNEX 2

### STANDARD AMENDMENTS

***Explanatory Note:***

*In order to give effect to ORR's conclusions on the Review, this Annex 2 sets out the proposed relevant changes to be made to Schedules 4, 5, 7 and 8 and the clauses of each Track Access Agreement.*

*In some Track Access Agreements, some of the provisions which are to be amended are not in standard form. Where this is the case, these are also identified in this Annex 2, which sets out how the standard amendments will need to be modified. In certain instances, bespoke modifications are set out in Part 1 of Annex 3 to this Review Notice.*

*In certain instances, the publication of certain proposed relevant changes would or might, in the opinion of ORR, seriously and prejudicially affect the interests of each Train Operator and/or Network Rail for the purpose of section 71(2) of the Act; they are therefore not being published. Where this is the case, such proposed relevant changes will be attached to Part 2 of Annex 3 to this Review Notice and will be sent only to the parties to the relevant Track Access Agreement, the Secretary of State for Transport, the Scottish Ministers and the Treasury, and where appropriate any relevant addressees listed in Part 2 of Annex 1 to this Review Notice.*

The following amendments shall be made to the Track Access Agreements, subject to any modifications set out in Annex 3:

**1 Consequential and other amendments to the clauses of each Track Access Agreement**

1.1 With the **exception** of the following Track Access Agreements:

- (i) the Track Access Agreement between Network Rail and Grand Union Trains No. 2 Limited (the "**GUT TAA**");
- (ii) the Track Access Agreement between Network Rail and West Coast Railway Company Limited (the "**WCRC TAA**"),

in sub-clause 1.1 (Definitions) of **each** Track Access Agreement insert in alphabetical order the new definition:

**"Public Holiday"** means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;"

1.2 In sub-clause 1.1 (Definitions) of the **following** Track Access Agreements:

- (i) the Track Access Agreement between Network Rail and East Coast Trains Limited (the "**East Coast TAA**");
- (ii) the Track Access Agreement between Network Rail and Grand Central Railway Company Limited (the "**Grand Central TAA**");
- (iii) the **GUT TAA**;
- (iv) the Track Access Agreement between Network Rail and Hull Trains Company Limited (the "**Hull Trains TAA**"),
- (a) in paragraph (c) of the definition of "Relevant Losses" delete the reference to "paragraph 18" and replace it with "paragraph 19";
- (b) delete the definition of "SPP Threshold" and replace it with the following:

**"SPP Threshold"** has the meaning ascribed to it in paragraph 19 of Schedule 8;"



1.3 In the definition of “Relevant Losses” in sub-clause 1.1 (Definitions) of the Track Access Agreement between Network Rail and South Yorkshire Supertram Limited (the “**Supertram TAA**”) **only**:

(a) in paragraph (b) delete “; or” and replace with “;” and

(b) delete paragraph (c).

1.4 In sub-clause 1.1 (Definitions) of the Track Access Agreement between Network Rail and NYMR PLC (the “**NYMR TAA**”) **only** insert in alphabetical order the new definition “SPP Threshold” as follows:

““**SPP Threshold**” has the meaning ascribed to it in paragraph 12 of Schedule 8.”.

1.5 In the **NYMR TAA** **only** delete sub-clause 11.3(a) (Restrictions on claims by Train Operator) and replace it with the following:

“(a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains (other than in respect of circumstances where the SPP Threshold has been exceeded as provided for in paragraph 12 of Schedule 8); and”.

1.6 In clause 16.1 (Payments, interest and VAT) of **each** Track Access Agreement:

(a) delete sub-clause 16.1.2 and replace with the following:

“16.1.2 *Delivery of invoices*

All invoices issued under Schedule 7, or statements of amounts payable under Schedule 4, Schedule 5 or Schedule 8, or the Network Code, or under the Traction Electricity Rules, shall be delivered by hand at, or sent by prepaid first class post or by email to, the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.”.

(b) delete sub-clause 16.1.3 and replace it with the following:

“16.1.3            *Content of invoices and other statements of amounts payable*

Each invoice and statement of amounts payable shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it and, where required by either party, include a purchase order number.”.

1.7     With the **exception** of the **East Coast TAA**, in clause 18.4 (Notices) of **each** Track Access Agreement:

(a)     delete sub-clause 18.4.1(b) and replace it with the following:

“ (b)     shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post, recorded delivery or by email to the relevant address or email address set out in Schedule 1.”.

(b)     delete sub-clause 18.4.3(c) and replace it with the following:

“ (c)     not used; and”.

**2            Schedule 4 to each Track Access Agreement**

2.1     In each of the **following** Track Access Agreements:

(i)     the **East Coast TAA**;

(ii)    the **Hull TAA**,

(a)     with the **exception** of Annex B to Part 3 of Schedule 4 (which shall not be deleted and which shall continue in full force), **delete** Schedule 4 and **replace** it with the Schedule 4 set out in Appendix 2 of this Annex 2;

(b)     in paragraph 1 (Definitions) of Part 3 **of this new Schedule 4**, delete the definitions of “SPD Cost Threshold No.1” and “SPD Cost Threshold No.2”, and replace them

with the definitions specific to that Train Operator's Track Access Agreement as set out in paragraph 1 of Appendix 1 to Part 1 of Annex 3 to this Review Notice;

- (c) in sub-paragraph 4.2 (Notional cost calculation formula) of Part 3 **of this new Schedule 4**, delete the definition of EBMPR and replace it with the definition specific to that Train Operator's Track Access Agreement as set out in paragraph 2 of Appendix 1 to Part 1 of Annex 3;
- (d) delete Annex A (Notification Factors) to Part 3 **of this new Schedule 4**, and replace it with the new Annex A specific to that Track Access Agreement, as set out in Appendix 1 of this Annex 2;
- (e) delete Annex C (Payment Rate per train mile) to Part 3 **of this new Schedule 4**, and replace it with the new Annex C (Payment Rate per train mile) specific to that Track Access Agreement, which is attached separately in Appendix 1 to Part 2 of Annex 3;
- (f) delete Annex D (Defined Service Group Revenue) to Part 3 **of this new Schedule 4**, and replace it with the new Annex D (Defined Service Group Revenue) specific to that Track Access Agreement, which is attached separately in Appendix 2 to Part 2 of Annex 3; and
- (g) in Part 5 **of this new Schedule 4**, complete the empty square brackets shown in the list of years and payment sums in paragraph 1 of Part 5 with the payment sums specific to that Train Operator's Track Access Agreement as set out in Appendix 2 to Part 1 of Annex 3 to this Review Notice.

2.2 In the **following** Track Access Agreements:

- (a) the **Grand Central TAA**;
- (b) the **GUT TAA**;
- (c) the **Supertram TAA**;
- (d) the **WCRC TAA**,

before paragraph 1 (Definitions) of Part 3 of Schedule 4 insert new paragraph A1 as follows, **save that**:

(a) in paragraph A1.1 to the **following** Track Access Agreements:

(i) the **Grand Central TAA**;

(ii) the **GUT TAA**;

the square brackets should be replaced with a reference to paragraph “17.1A”;

(b) in paragraph A1.1 of the **Supertram TAA only**, the square brackets should be replaced with a reference to paragraph “10.1A”;

(c) in paragraph A1.1 of the **WCRC TAA only**, the square brackets should be replaced with a reference to paragraph “11”,

**“A1. Change of Schedule 4**

A1.1 In the event that ORR publishes a notice pursuant to paragraph [***parties to insert relevant cross reference***] of Schedule 8 and ORR notifies the Train Operator that such notice will result in a change in accordance with paragraph 2.8 of ‘PR23 final determination: Policy position – Schedules 4 and 8 incentives regimes’ (a “**Change Notice**”), the Train Operator may serve a notice, in the form set out in Appendix 4A (an “**Opt-in Notice**”). The effect of the Train Operator serving an Opt-in Notice is that this Schedule 4 shall be replaced with Schedule 4 of the model track access contract for publicly contracted passenger services, save for this paragraph A1 and Annexes A, B, C and D, and subject to the inclusion of annual Access Charge Supplement payment sums in paragraph 1 of Part 5 of the replacement Schedule 4 and any bespoke terms being agreed between the parties.

A1.2 The Train Operator must serve an Opt-in Notice given pursuant to paragraph A1.1 on Network Rail no later than two months after the date ORR publishes the Change Notice referred to in paragraph A1.1. Promptly following the service of the Opt-in Notice the parties shall endeavour to agree the required amendment. As soon as reasonably practicable after the parties have agreed the required amendment pursuant to the Opt-in Notice, they shall use all reasonable

endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment. Any amendment pursuant to the Opt-in Notice shall apply only where ORR approval is granted under section 22 of the Act and with retrospective effect from the date of the Opt-in Notice.

A1.3 In the event that ORR publishes a Change Notice after the Train Operator has served an Opt-in Notice in accordance with A1.2 above, the Train Operator may serve a notice, in the form set out in Appendix 4B (an “**Opt-out Notice**”). The effect of the Train Operator serving an Opt-out Notice is that this Schedule 4 shall be replaced with Schedule 4 of the model track access contract for open access passenger services, save for Annexes A, B, C and D, and subject to any bespoke terms agreed between the parties.

A1.4 The Train Operator must serve an Opt-out Notice given pursuant to paragraph A1.3 on Network Rail no later than two months after the date ORR publishes the Change Notice referred to in paragraph A1.3. Promptly following the service of the Opt-out Notice the parties shall endeavour to agree the required amendment. As soon as reasonably practicable after the parties have agreed the required amendment pursuant to the Opt-out Notice, they shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment. Any amendment pursuant to the Opt-out Notice shall apply only where ORR approval is granted under section 22 of the Act and with retrospective effect from the date of the Opt-out Notice.”

2.3 In paragraph 1 (Definitions) of Part 3 of Schedule 4 to the Track Access Agreement between Network Rail and Eurostar International Limited (the “**Eurostar TAA**”) only delete the definition of “Public Holiday”.

2.4 In the following Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **GUT TAA**,

in paragraph 1 (Definitions) of Part 3 of Schedule 4, delete the definition of “Journey Time”.

2.5 In the **following** Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **Supertram TAA**,

in paragraph 1 (Definitions) of Part 3 of Schedule 4:

- (a) delete the definition of “Initial Indexation Factor”;
- (b) delete the definition of “Public Holiday”;
- (c) delete the definitions of “SPD Cost Threshold No.1” and “SPD Cost Threshold No.2”, and replace them with the definitions specific to that Train Operator’s Track Access Agreement as set out in paragraph 1 of Appendix 1 to Part 1 of Annex 3.

2.6 In paragraph 1 (Definitions) of Part 3 of Schedule 4 to the **GUT TAA only**:

- (a) delete the definition of “Initial Indexation Factor”;
- (b) delete the definitions of “SPD Cost Threshold No.1” and “SPD Cost Threshold No.2”, and replace them with the definitions specific to that Train Operator’s Track Access Agreement as set out in paragraph 1 of Appendix 1 to Part 1 of Annex 3.

2.7 In the **following** Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **GUT TAA**;
- (iii) the **Supertram TAA**,

in sub-paragraph 2.8 (RoU Claim Notice) of Part 3 of Schedule 4, delete the words “Clause 2.7” and replace with the words “paragraph 2.7”.

2.8 In the **following** Track Access Agreements:

- (i) the **Eurostar TAA**;
- (ii) the **Grand Central TAA**;
- (iii) the **GUT TAA**;
- (iv) the **Supertram TAA**,

delete sub-paragraph 2.11 of Part 3 of Schedule 4 and replace it with the following:

**“2.11 *Early notice of RoU Liability***

- (a) The parties may at any time engage in discussions on any matter likely to result in payments in respect of any RoU Liability and shall use reasonable endeavours to agree whether such RoU Liability calculated in accordance with paragraph 7 or 8 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such RoU Liability. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it thinks such RoU Liability will arise or mitigating actions should be contemplated.
- (b) Following any agreement or determination that such RoU Liability are likely to arise in connection with one or more future Restrictions of Use or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption. This may include any advance compensation for such Restriction(s) of Use to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption.
- (c) Nothing in this contract shall prevent Network Rail and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Restriction(s) of Use.
- (d) Unless otherwise agreed, the timescales for claiming RoU Liability shall still apply.”.

2.9 In the **WCRC TAA only**, delete sub-paragraph 2.11 of Part 3 of Schedule 4 and replace it with the following:

“2.11 ***Early notice of RoU Liability***

- (a) The parties may at any time engage in discussions on any matter likely to result in payments in respect of any RoU Liability and shall use reasonable endeavours to agree whether such RoU Liability calculated in accordance with paragraph 7 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such RoU Liability. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it thinks such RoU Liability will arise or mitigating actions should be contemplated.
- (b) Following any agreement or determination that such RoU Liability are likely to arise in connection with one or more future Restrictions of Use or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption. This may include any advance compensation for such Restriction(s) of Use to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption.
- (c) Nothing in this contract shall prevent Network Rail and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Restriction(s) of Use.
- (d) Unless otherwise agreed, the timescales for claiming RoU Liability shall still apply.”.

2.10 In the **following** Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **GUT TAA**;
- (iii) the **Supertram TAA**,



in sub-paragraph 4.2 (Notional cost calculation formula) of Part 3 of Schedule 4 to **each** Track Access Agreement, delete the definition of EBMPR and replace it with the definition specific to that Train Operator's Track Access Agreement as set out in paragraph 2 of Appendix 1 to Part 1 of Annex 3.

2.11 In the **following** Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **GUT TAA**;
- (iii) the **Supertram TAA**,

delete paragraph 10 (Dispute resolution) of Part 3 of Schedule 4 and replace it with the following:

“10. ***Dispute resolution***

10.1 If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.10(g), 2.11, 7 or 8 or fail to reach agreement on the amount of costs notified under paragraph 2.9(d):

- (a) within 6 months, or such other period as the parties may agree, of the issue of the relevant notice (as set out in paragraphs 2.9(d), 2.10(d) or 7.1(a) or once discussions or negotiations have commenced (as required under 2.11 and 8.1(a) (as applicable)), the parties shall meet to discuss outstanding aspects of the claim, which may include but is not limited to the provision of information or points in dispute;
- (b) if, no later than 28 days after the date of the meeting referred to in paragraph 10.1(a), the claim is not resolved or withdrawn:
  - (i) the parties shall agree a timetable for a subsequent meeting; or
  - (ii) either party may refer the matter for resolution in accordance with the ADRR.

10.2 Notwithstanding 10.1, either party may refer the matter for resolution in accordance with the ADRR at any time following the issue of the relevant notice(s) in accordance with paragraph 2.9(d), 2.10(d) or 7.1(a) and once the discussions or negotiations have commenced in accordance with paragraph 2.11 or 8.1(a).”

2.12 In the **following** Track Access Agreements:

- (i) the **Eurostar TAA**;
- (ii) the **WCRC TAA**,

delete paragraph 10 (Dispute resolution) of Part 3 of Schedule 4 and replace it with the following:

“10. ***Dispute resolution***

10.1 If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.11 or 7 or fail to reach agreement on the amount of costs notified under paragraph 2.9(d):

- (a) within 6 months, or such other period as the parties may agree, of the issue of the relevant notice (as set out in paragraphs 2.9(d) or 7.1(a) or once discussions or negotiations have commenced (as required under 2.11) (as applicable)), the parties shall meet to discuss outstanding aspects of the claim, which may include but is not limited to the provision of information or points in dispute;
- (b) if, no later than 28 days after the date of the meeting referred to in paragraph 10.1(a), the claim is not resolved or withdrawn:
  - (i) the parties shall agree a timetable for a subsequent meeting; or
  - (ii) either party may refer the matter for resolution in accordance with the ADRR.

10.2 Notwithstanding 10.1, either party may refer the matter for resolution in accordance with the ADRR at any time following the issue of the relevant notice(s) in

accordance with paragraph 2.9(d) or 7.1(a) and once the discussions or negotiations have commenced in accordance with paragraph 2.11.”

2.13 With the **exception** of the following Track Access Agreements:

- (i) the **East Coast TAA**;
- (ii) the **Hull TAA**;
- (iii) the **NYMR TAA**,

in sub-paragraph 13.2 (Disputes) of Part 3 of Schedule 4 to **each** Track Access Agreement delete the words “10 days” and replace them with the words “15 days”.

2.14 In the **following** Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **GUT TAA**;
- (iii) the **Supertram TAA**,

delete paragraph 14 (Indexation) of Part 3 of Schedule 4 and replace it with the following:

“14. **Indexation**

14.1 The indexation formula applicable to this paragraph 14 is:

$$RI_t = \left(1 + \frac{CPI_{t-1} - CPI_{2022}}{CPI_{2022}}\right)$$

where:

$RI_t$  is the relevant indexation value in the Relevant Year  $t$ ;

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year  $t-1$ ; and

$CPI_{2022}$  means the CPI published or determined with respect to the month of November 2022.

14.2 Each of the values for EBMPR (defined and specified in paragraph 4.2), TMPR (defined in paragraph 4.2 and specified in Annex C to this Part 3 of Schedule 4) and Defined Service Group Revenues (specified in Annex D to this Part 3 of Schedule 4) shall be adjusted in respect of Periods in Relevant Year t by multiplying them by the relevant indexation value, as set out in paragraph 14.1.

14.3 Each of the SPD Cost Threshold No.1 and SPD Cost Threshold No.2, as set out in paragraph 1.1 of this Schedule 4, shall be adjusted in respect of Periods in Relevant Year t by multiplying them by the relevant indexation value, as set out in paragraph 14.1.”.

2.15 In the **following** Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **Supertram TAA**,
- (a) delete Annex A (Notification Factors) to Part 3 of Schedule 4 to **each** Track Access Agreement, and replace it with the new Annex A specific to that Track Access Agreement, as set out in Appendix 1 of this Annex 2;
- (b) delete Annex C (Payment Rate per train mile) to Part 3 of Schedule 4 to **each** Track Access Agreement, and replace it with the new Annex C (Payment Rate per train mile) specific to that Track Access Agreement, which is attached separately in Appendix 1 to Part 2 of Annex 3;
- (c) delete Annex D (Defined Service Group Revenue) to Part 3 of Schedule 4 to **each** Track Access Agreement, and replace it with the new Annex D (Defined Service Group Revenue) specific to that Track Access Agreement, which is attached separately in Appendix 2 to Part 2 of Annex 3.

2.16 In the **following** Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **GUT TAA**;
- (iii) the **Supertram TAA**;

(iv) the **WCRC TAA**,

(a) after Part 5 of Schedule 4 to **each** Track Access Agreement insert Appendix 4A as follows:

**“Appendix 4A**

**Opt-in Notice**

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Network Rail Infrastructure Limited

[Enter address specified in paragraph 1 of Schedule 1 to the contract]

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

**Opt-in to the Schedule 4 Restrictions of Use provisions**

This is an Opt-in Notice in respect of Schedule 4 of the track access contract between Network Rail Infrastructure Limited and [Enter train operator name here], dated [insert date of track access contract] (“the contract”).

[Enter train operator name here] hereby exercises its right to opt in to the provisions of Schedule 4 of the model track access contract for publicly contracted passenger services, pursuant to paragraph A1.1 of Part 3 to Schedule 4 to the contract.

This notice has no effect in relation to Annexes A, B, C and D of Part 3 of Schedule 4, and is subject to the inclusion of annual Access Charge Supplement payment sums in paragraph 1 of Part 5 of the replacement Schedule 4 and any bespoke terms to be agreed with Network Rail.

{I have sent a copy of this notice to [any other person at Network Rail entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].}

Yours faithfully

**[Name of train operator representative]**”;

(b) after Appendix 4A of Schedule 4 to each Track Access Agreement insert Appendix 4B as follows:

**“Appendix 4B**

**Opt-out Notice**

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Network Rail Infrastructure Limited

[Enter address specified in paragraph 1 of Schedule 1 to the contract]

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

**Opt-out from the Schedule 4 Restrictions of Use provisions**

This is an Opt-out Notice in respect of Schedule 4 of the track access contract between Network Rail Infrastructure Limited and [Enter train operator name here], dated [insert date of track access contract] (“the contract”).

[Enter train operator name here] hereby exercises its right to opt out of the provisions of Schedule 4 of the model track access contract for publicly contracted passenger services and substitute those with the provisions of Schedule 4 of the model track access contract for open access passenger services, pursuant to paragraph A1.3 of Part 3 to Schedule 4 to the contract.

This notice has no effect in relation to Annexes A, B, C and D of Part 3 of Schedule 4, and is subject to any bespoke terms to be agreed with Network Rail.

{I have sent a copy of this notice to [any other person at Network Rail entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].}

Yours faithfully

[Name of train operator representative]”.

### **3 Schedule 5 to each Track Access Agreement**

3.1 With the **exception** of the following Track Access Agreements:

- (i) the **GUT TAA**;
- (ii) the **WCRC TAA**,

in paragraph 1 (Definitions) of Schedule 5 to **each** Track Access Agreement delete the definition of “Public Holiday”.

### **4 Schedule 7 to each Track Access Agreement**

4.1 In Part 1 of Schedule 7 to the **following** Track Access Agreements:

- (i) the **East Coast TAA**;
- (ii) the **Eurostar TAA**;

(iii) the **Grand Central TAA**;

(iv) the **Hull Trains TAA**,

in paragraph 1 (Definitions):

(a) delete the definition of “Capacity Charge”;

(b) delete the definition of “Capacity Charge Wash-up”;

(c) delete the definition of “Route-Level Efficiency Benefit Share”;

(d) delete the words “the Capacity Charge,” from the definition of Variable Charges.

4.2 In Part 1 of Schedule 7 to the **following** Track Access Agreements:

(i) the **NYMR TAA**;

(ii) the **Supertram TAA**;

(iii) the **WCRC TAA**,

in paragraph 1 (Definitions):

(a) delete the definition of “Capacity Charge”;

(b) delete the definition of “Route-Level Efficiency Benefit Share”;

(c) delete the words “the Capacity Charge,” from the definition of Variable Charges.

4.3 With the **exception** of the following Track Access Agreements:

(i) the **Eurostar TAA**;

(ii) the **NYMR TAA**;

(iii) the **WCRC TAA**,

in paragraph 1 (Definitions) of Part 1 of Schedule 7 to **each** Track Access Agreement:

(a) delete the definition of “Initial Indexation Factor”;



- (b) delete the definition of “New Modelled Train” and replace it with the following:

“**New Modelled Train**” means a type of train for which  $E_{tmo}$  is to be calculated for the purposes of paragraph 4.1.1 of Part 2 but in relation to which no train category  $i$ , and no modelled consumption rate, is shown in the Passenger Traction Electricity Modelled Consumption Rates for CP7 table in the Traction Electricity Modelled Consumption Rates List”;

- (c) delete the definition of “PFM Rate”;

- (d) delete the definition of “PFM Rates List”;

- (e) in the definition of “Track Usage Price List” delete the date “20 December 2018” and replace it with the date “20 December 2023”;

- (f) delete the definition of “Traction Electricity Modelled Consumption Rates List” and replace it with the following:

“**Traction Electricity Modelled Consumption Rates List**” means the document entitled “Traction Electricity Modelled Consumption Rates List” published by Network Rail on or about 20 December 2023 and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate:

- (a) any supplements to that document consented to or determined pursuant to paragraph 9.3A of Part 2 of Schedule 7 of this contract;

- (b) any supplements to the document entitled “Traction Electricity Modelled Consumption Rates List” published by Network Rail on or about 20 December 2018 which ORR consents to or determines after 20 December 2023”;

- (g) in the definition of “Traction Electricity Modelled Default Rate” delete the reference to “CP6” and replace it with a reference to “CP7”;

- (h) delete the definition of “Traction Electricity Modelled Default Rate Period” and replace it with the following:

“**Traction Electricity Modelled Default Rate Period**” means the period from the date on which the New Modelled Train is first used on the Network by the Train Operator until the date on which the train in question has been added to Appendix 7D of this Schedule;”;

(i) delete the definition of “Traction Electricity Modelled Default Rate Reconciliation Period”;

(j) delete the definition of “train category i” and replace it with the following:

“**train category i**” means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled “Passenger Traction Electricity Modelled Consumption Rates for CP7”;

(k) in the definition of “VUC Default Period” delete the date “1 April 2019” and replace it with the date “1 April 2024”.

4.4 In Part 1 of Schedule 7 to the **following** Track Access Agreements:

(i) the **Eurostar TAA**;

(ii) the **NYMR TAA**;

(iii) the **WCRC TAA**,

in paragraph 1 (Definitions):

(a) delete the definition of “Initial Indexation Factor”;

(b) in the definition of “VUC Default Period” delete the date “1 April 2019” and replace it with the date “1 April 2024”.

4.5 With the **exception** of the following Track Access Agreements:

(i) the **NYMR TAA**;

(ii) the **Supertram TAA**;

(iii) the **WCRC TAA**,

in the definition of “Open Access ICC Rates List” in Part 1 of Schedule 7 to **each** Track Access Agreement delete the date “20 December 2018” and replace it with the date “20 December 2023”.

4.6 In Part 1 of Schedule 7 to the **following** Track Access Agreements:

(i) the **GUT TAA**;

(ii) the **Supertram TAA**;

(iii) the **WCRC TAA**,

delete the definition of “RPI”.

4.7 In Part 2 of Schedule 7 to the **following** Track Access Agreements:

(i) the **East Coast TAA**;

(ii) the **Eurostar TAA**;

(iii) the **Grand Central TAA**;

(iv) the **Hull Trains TAA**;

in paragraph 1 (Principal formula),

(a) delete “ $K_t + KW_t +$ ” from the formula;

(b) delete the definitions of “ $K_t$ ” and “ $KW_t$ ”.

4.8 In Part 2 of Schedule 7 to the **following** Track Access Agreements:

(i) the **NYMR TAA**;

(ii) the **Supertram TAA**;

(iii) the **WCRC TAA**,

in paragraph 1 (Principal formula),

- (a) delete “K<sub>t</sub> +” from the formula;
- (b) delete the definition of “K<sub>t</sub>”.

4.9 With the **exception** of the following Track Access Agreements:

- (i) the **NYMR TAA**;
- (ii) the **Supertram TAA**;
- (iii) the **WCRC TAA**,

in paragraph 2 (Infrastructure Cost Charge) of Part 2 of Schedule 7 to **each** Track Access Agreement delete the definition of R<sub>ti</sub> and replace it with the following:

“R<sub>ti</sub> means the rate per Service Coded Group i in respect of Relevant Year t as shown in the Open Access ICC Rates List, expressed in pounds sterling per Train Mile and rounded to four decimal places, and indexed as follows:

in relation to any Relevant Year t commencing on or after 1 April 2024, R<sub>ti</sub> shall have the value for the rate per Service Coded Group i shown for the Train Operator in the Open Access ICC Rates List, multiplied by the phased-in charges indexation adjustment derived from the following formula:

$$PCIA_t = \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

PCIA<sub>t</sub> means the phased-in charges indexation adjustment in respect of Relevant Year t;

CPI<sub>t-1</sub> means the CPI published or determined with respect to the month of November in Relevant Year t-1; and

CPI<sub>2022</sub> means the CPI published or determined with respect to the month of November 2022,”

4.10 With the **exception** of the following Track Access Agreements:

- (i) the **NYMR TAA**;

(ii) the **WCRC TAA**,

in paragraph 3.1 (Variable Usage Charge) of Part 2 of Schedule 7 to **each** Track Access Agreement delete the definition of  $V_{it}$  and replace it with the following:

“ $V_{it}$  means an amount for a type of vehicle  $i$  for Relevant Year  $t$ , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

$$V_{it} = V_{it-1} \bullet \left( 1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

where:

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year  $t-1$ ;

$CPI_{t-2}$  means the CPI published or determined with respect to the month of November in Relevant Year  $t-2$ ,

but so that in relation to the Relevant Year commencing on 1 April 2024,  $V_{it-1}$  shall have, in respect of vehicle type  $i$ , the corresponding variable usage charge rate per Vehicle Mile for that vehicle type  $i$  set out in the Track Usage Price List;”.

4.11 In paragraph 3.1 (Variable Usage Charge) of Part 2 of Schedule 7 to the **NYMR TAA only** delete the definition of  $V_{it}$  and replace it with the following:

“ $V_{it}$  means an amount for a type of vehicle  $i$  for Relevant Year  $t$ , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived as follows:

in respect of any Relevant Year  $t$  commencing on or after 1 April 2024,  $V_{it}$  shall have, in respect of each Vehicle Mile, the value set out in the section of the Track Usage Price List entitled “North Yorkshire Moors Railway Enterprises PLC Variable Usage Charge rates”, multiplied by the phased-in charges indexation adjustment derived from the following formula:

$$PCIA_t = \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

$PCIA_t$  means the phased-in charges indexation adjustment in respect of Relevant Year t;

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year t-1;

$CPI_{2022}$  means the CPI published or determined with respect to the month of November 2022;”

- 4.12 In paragraph 3.1 (Variable Usage Charge) of Part 2 of Schedule 7 to the **WCRC TAA** only delete the definition of  $V_{it}$  and replace it with the following:

“ $V_{it}$  means an amount for a type of vehicle i for Relevant Year t, expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived as follows:

in respect of any Relevant Year t commencing on or after 1 April 2024,  $V_{it}$  shall have, in respect of each Vehicle Mile, the value set out in the section of the Track Usage Price List entitled “West Coast Railway Company Limited Variable Usage Charge rates (Jacobite)”, multiplied by the phased-in charges indexation adjustment derived from the following formula:

$$PCIA_t = \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

$PCIA_t$  means the phased-in charges indexation adjustment in respect of Relevant Year t;

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year t-1;

$CPI_{2022}$  means the CPI published or determined with respect to the month of November 2022;”.

- 4.13 With the exception of the **NYMR TAA**, in paragraph 3.3 (VUC Default Charge) of Part 2 of Schedule 7 to each Track Access Agreement delete the definition of  $D_{nt}$  and replace it with the following:

“D<sub>nt</sub> means the VUC Default Rate for that New Specified Equipment for Relevant Year t, expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

$$D_{nt} = D_{nt-1} \bullet \left( 1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

where:

CPI<sub>t-1</sub> has the meaning set out in paragraph 3.1 above;

CPI<sub>t-2</sub> has the meaning set out in paragraph 3.1 above,

but so that in relation to the Relevant Year commencing on 1 April 2024, D<sub>nt-1</sub> shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment;”.

- 4.14 In paragraph 3.3 (VUC Default Charge) of Part 2 of Schedule 7 to the **NYMR TAA only** delete the definition D<sub>nt</sub> and replace it with the following:

“D<sub>nt</sub> means an amount for that New Specified Equipment for Relevant Year t, expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived as follows:

- (a) in respect of any New Specified Equipment which is a diesel locomotive, D<sub>nt</sub> shall be the corresponding rate set out in the section of the Track Usage Price List entitled “North Yorkshire Moors Railway Enterprises PLC Variable Usage Charge Diesel locomotive default rate”, multiplied as follows:

in respect of any Relevant Year t commencing on or after 1 April 2024, D<sub>nt</sub> shall be multiplied by the phased-in charges indexation adjustment derived from the following formula:

$$PCIA_t = \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

PCIA<sub>t</sub> means the phased-in charges indexation adjustment in respect of Relevant Year t;

CPI<sub>t-1</sub> has the meaning set out in paragraph 3.1 above;

CPI<sub>2022</sub> has the meaning set out in paragraph 3.1 above;

- (b) in respect of any New Specified Equipment which is a vehicle other than a diesel locomotive, D<sub>nt</sub> shall be the corresponding passenger default rate set out in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge default rates”, derived from the following formula:

$$D_{nt} = D_{nt-1} \bullet \left( 1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

where

CPI<sub>t-1</sub> has the meaning set out in paragraph 3.1 above;

CPI<sub>t-2</sub> means the CPI published or determined with respect to the month of November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2024, D<sub>nt-1</sub> shall have, in respect of New Specified Equipment, the corresponding passenger default rate for that New Specified Equipment;”.

4.15 With the **exception** of the following Track Access Agreements:

- (i) the **Eurostar TAA**;
- (ii) the **NYMR TAA**;
- (iii) the **WCRC TAA**,

in sub-paragraph 4.1.2 of Part 2 of Schedule 7 to **each** Track Access Agreement:

- (a) delete the title of the paragraph and replace it with “*Calculation of modelled consumption*”;



- (b) delete from the definition C; (a) the words “or, if a PFM Rate applies in accordance with the Traction Electricity Rules, the PFM Rates List”.

4.16 In Part 2 of Schedule 7 to the **following** Track Access Agreements:

- (i) the **East Coast TAA**;
- (ii) the **Eurostar TAA**;
- (iii) the **Grand Central TAA**;
- (iv) the **Hull Trains TAA**;
- (v) the **NYMR TAA**;
- (vi) the **Supertram TAA**;
- (vii) the **WCRC TAA**,

delete paragraph 6 and replace it with “Not used”.

4.17 With the **exception** of the following Track Access Agreements:

- (i) the **NYMR TAA**;
- (ii) the **WCRC TAA**,

in paragraph 8 (Electrification Asset Usage Charge) of Part 2 of Schedule 7 to **each** Track Access Agreement delete the definition of  $EV_{tk}$  and replace it with the following:

“ $EV_{tk}$  means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t, expressed in pence per electrified Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

$$EV_{tk} = EV_{t-1k} \bullet \left( 1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

where:

$CPI_{t-1}$  has the meaning set out in paragraph 3.1 above; and

$CPI_{t-2}$  has the meaning set out in paragraph 3.1 above,

but so that in relation to the Relevant Year commencing on 1 April 2024,  $EV_{t-1k}$  shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List; and”.

4.18 With the **exception** of the following Track Access Agreements:

- (i) the **Eurostar TAA**;
- (ii) the **NYMR TAA**;
- (iii) the **Supertram TAA**;
- (iv) the **WCRC TAA**,

in paragraph 9 (Bilateral supplements to the Open Access ICC Rates List, Traction Electricity Modelled Consumption Rates List and Track Usage Price List) of Part 2 of Schedule 7 to **each** Track Access Agreement:

- (a) delete the words “Traction Electricity Modelled Consumption Rates List and” from the header of paragraph 9;
- (b) delete from sub-paragraph 9.3 the words “Traction Electricity Modelled Consumption Rates List,”;
- (c) after sub-paragraph 9.3 insert new paragraph 9.3A as follows:

“9.3A For the purposes of finalising any supplement to the document entitled “Traction Electricity Modelled Consumption Rates List” published by Network Rail on or about 20 December 2018 which has been proposed by either the Train Operator or Network Rail before 1 April 2024, paragraphs 9.3-9.13 of Part 2 of Schedule 7, any relevant definitions in paragraph 1 of Part 1 of Schedule 7, and any further paragraphs of Schedule 7 necessary to give effect to paragraph 1 of Part 1 of Schedule 7 of the version of this contract that was in force up until 31 March 2024 shall continue to apply.”

(d) delete sub-paragraph 9.4 and replace it with the following:

“9.4 Either the Train Operator or Network Rail shall be entitled to propose that:

- (a) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or
- (b) the Open Access ICC Rates List be amended or supplemented as necessary to take account of any changes to the Services or to include rates in respect of new Services (and in this instance an amendment to the Open Access ICC Rates List shall be treated as a supplement for the purposes of this paragraph 9).”;

(e) delete sub-paragraph 9.11 and replace it with the following:

“9.11 In the case of a supplement to the Open Access ICC Rates List, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that such date shall not be a date falling prior to the first day the new or changed Services are operated by the Train Operator.”;

(f) delete sub-paragraph 9.13 and replace it with the following:

“9.13 Following ORR’s consent or determination under paragraph 9.10 Network Rail shall:

- (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 above as applicable; and
- (b) within 28 days of the date of ORR’s consent or determination:
  - (i) issue any adjusting invoice or credit note to the Train Operator in the case of a supplement to the Track Usage Price List to reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time

the Train Operator first used the relevant railway vehicle on the Network;

and

- (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract to which Network Rail is a party.”;

- (g) delete sub-paragraph 9.14 and replace it with the following:

“9.14 Any supplement to the Track Usage Price List or Open Access ICC Rates List which ORR has consented to or determined pursuant to a passenger track access contract previously held by the Train Operator shall also apply to this contract.”.

- 4.19 In paragraph 9 (Bilateral supplements to the Open Access ICC Rates List and Track Usage Price List) of Part 2 of Schedule 7 to the **Eurostar TAA only**, delete sub-paragraph 9.11 and replace it with the following:

“9.11 In the case of a supplement to the Open Access ICC Rates List, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that such date shall not be a date falling prior to the first day the new or changed Services are operated by the Train Operator.”

- 4.20 In paragraph 9 (Bilateral supplements to the Traction Electricity Modelled Consumption Rates List and Track Usage Price List) of Part 2 of Schedule 7 to the **Supertram TAA only**:

- (a) delete the words “Traction Electricity Modelled Consumption Rates List” from the header of paragraph 9;

- (b) delete sub-paragraph 9.3 and replace it with the following:

“9.3 No supplement to the Track Usage Price List shall have effect unless it has been:

- (a) agreed between the parties and ORR has consented to it; or
- (b) determined by ORR.”;
- (c) after sub-paragraph 9.3 insert new paragraph 9.3A as follows:

“9.3A For the purposes of finalising any supplement to the document entitled “Traction Electricity Modelled Consumption Rates List” published by Network Rail on or about 20 December 2018 which has been proposed by either the Train Operator or Network Rail before 1 April 2024, paragraphs 9.3-9.13 of Part 2 of Schedule 7, any relevant definitions in paragraph 1 of Part 1 of Schedule 7, and any further paragraphs of Schedule 7 necessary to give effect to paragraph 1 of Part 1 of Schedule 7 of the version of this contract that was in force up until 31 March 2024 shall continue to apply.”
- (d) delete sub-paragraph 9.4 and replace it with the following:

“Either the Train Operator or Network Rail shall be entitled to propose that the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate.”;
- (e) delete sub-paragraph 9.11 and replace with the words “Not used”;
- (f) delete sub-paragraph 9.13 and replace it with the following:

“9.13 Following ORR’s consent or determination under paragraph 9.10 Network Rail shall:

  - (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 above as applicable; and
  - (b) within 28 days of the date of ORR’s consent or determination:
    - (i) issue any adjusting invoice or credit note to the Train Operator in the case of a supplement to the Track Usage Price List to reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the

VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network;

and

- (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract to which Network Rail is a party.”;

- (g) delete sub-paragraph 9.14 and replace it with the following:

“9.14 Any supplement to the Track Usage Price List which ORR has consented to or determined pursuant to a passenger track access contract previously held by the Train Operator shall also apply to this contract”.

4.21 With the exception of the **GUT TAA**:

- (a) in paragraph 10 (Payment of Track Charges and other sums due under the contract) of Part 2 of Schedule 7 to each Track Access Agreement delete paragraph 10.1(a)(iii) and replace it with the following:

“(iii) not used”;

- (b) delete Part 3 of Schedule 7 to each Track Access Agreement and replace it with the following:

**“Part 3**

(Not used)”

- (c) in Part 6 (Supplemental Provisions) of Schedule 7 to each Track Access Agreement delete sub-paragraph (j) and replace it with the following:

“(j) not used; and”.

4.22 In paragraph 1(a) (General) of Part 7 of Schedule 7 to **each** Track Access Agreement delete the date “1 April 2024” and replace it with the date “1 April 2029”.

## **5 Schedule 8 to each Track Access Agreement**

5.1 With the **exception** of the **Eurostar TAA**, in sub-paragraph 1.1 (Definitions) of Schedule 8 to **each** Track Access Agreement, delete the definition of “Initial Indexation Factor”.

5.2 In sub-paragraph 1.1 (Definitions) of Schedule 8 to the **WCRC TAA only**,

(a) delete the following definitions:

(i) “30% Exposure”;

(ii) “Exposure Level”;

(iii) “Zero Exposure”.

(b) insert in alphabetical order, the following definition:

“**Planned Service Incident Cap Access Charge Supplement Rate**” has the meaning ascribed to it in paragraph 9.2;”

5.3 In paragraph 7 (Indexation) of Schedule 8 to the **following** Track Access Agreements:

(i) the **NYMR TAA**;

(ii) the **Supertram TAA**,

delete paragraph 7.1 and replace it with the following:

“7.1 *CPI Uplift in relation to Rates and Caps in Appendix 1*

The Network Rail Payment Rate, the Train Operator Payment Rate, the Network Rail Cap and the Train Operator Cap in Appendix 1 to this Schedule 8 shall be multiplied by the below indexation figure for the Relevant Year:

$$RI_t = \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

$RI_t$  means the indexation figure in the Relevant Year t;

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year t-1;

$CPI_{2022}$  means the CPI published or determined with respect to the month of November 2022.”

- 5.4 Delete sub-paragraph 7.2 of Schedule 8 to the **WCRC TAA only**, and replace it with the following:

“7.2 The Network Rail Payment Rate, Train Operator Payment Rate, Network Rail Annual Cap and Train Operator Annual Cap, Network Rail Cancellation Sum, Joint Cancellation Sum and the Charter Service Variation Sum in Appendix 1 to this Schedule 8 shall be multiplied by the below indexation figure for the Relevant Year (rounded to three decimal places):

$$RI_t = \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

$RI_t$  means the indexation figure in the Relevant Year t;

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year t-1;

$CPI_{2022}$  means the CPI published or determined with respect to the month of November 2022.”

- 5.5 In paragraph 8A.3 of Schedule 8 of the **NYMR TAA only**, delete Table 8A.3 (Advanced Cancellation Rates) and replace it with the following:



“Table 8A.3: Advanced Cancellation Rates

<b>Notice</b>	<b>Cancellation 3-7 days notice</b>	<b>Cancellation 8-14 days notice</b>	<b>Cancellation 15-28 days notice</b>
Cancellation Rate	£506.72	£361.96	£217.17”

- 5.6 Delete paragraph 8A.4 (CPI Uplift in relation to Advanced Cancellation) of Schedule 8 of the **NYMR TAA only**, and replace it with the following:

“8A.4 *CPI Uplift in relation to Advanced Cancellation*

Any payment for Advanced Cancellation shall be at the Cancellation Rate set out in Table 8A.3 Advanced Cancellation Rates subject to the following variation:

For each Relevant Year, the value of the payment for Advanced Cancellation shall be calculated in accordance with the following formula:

$$ACR_t = ACR_{t-1} \bullet \left( 1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

where:

$ACR_t$  is the applicable Cancellation Rate for the relevant year t;

$ACR_{t-1}$  is the applicable Cancellation Rate for the relevant year t-1;

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year t-1; and

$CPI_{t-2}$  means the CPI published or determined with respect to the month of November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2024,  $ACR_{t-1}$  shall have the relevant value specified in Table 8A.3.”

5.7 With the **exception** of the following Track Access Agreements:

- (i) the **Eurostar TAA**;
- (ii) the **NYMR TAA**;
- (iii) the **Supertram TAA**;
- (iv) the **WCRC TAA**,

delete sub-paragraph 9.1(iii) of Schedule 8 to **each** Track Access Agreement and replace it with the following:

“(iii) the CV indexation figure in Relevant Year t shall be derived from the following formula:

$$CV_t = \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

CV<sub>t</sub> means the CV indexation in Relevant Year t;

CPI<sub>t-1</sub> means the CPI published or determined with respect to the month of November in Relevant Year t-1; and

CPI<sub>2022</sub> means the CPI published or determined with respect to the month of November 2022.”.

5.8 For the **NYMR TAA only**, after paragraph 9.1 (Aggregate net liability of Network Rail and the Train Operator for Performance Sums) of Schedule 8 insert new sub-paragraph 9.1A as follows:

“9.1A ***Sustained poor performance***

9.1A.1 Payments by Network Rail in respect of Relevant Losses claimed by the Train Operator under the compensation provisions for sustained poor performance under paragraph 12 shall not be subject to any of the limits or caps referred to in paragraph 9.1.”.

- 5.9 For the **NYMR TAA only**, after paragraph 9.2 (Issue of invoice or credit note) of Schedule 8 insert new sub-paragraph 9.2A as follows:

**“9.2A *Payment for sustained poor performance***

9.2A.1 Within 28 days after the end of the Charging Period in which the liability of Network Rail for sustained poor performance is determined in accordance with paragraph 12.3, Network Rail shall make the relevant payment to the Train Operator.”.

- 5.10 For the **WCRC TAA only**, delete paragraph 9 (Selection by the Train Operator of the Planned Service Incident Cap and Exposure Level) of Schedule 8 and replace it with the following:

**“9. *Selection by the Train Operator of the Planned Service Incident Cap***

**9.1 *Selection by the Train Operator of the Planned Service Incident Cap***

9.1.1 On or before the date on which this paragraph 9.1 takes effect, the Train Operator shall notify Network Rail in writing of the level of Planned Service Incident Cap it wishes to apply (the “**Initial Planned Service Incident Cap Notice**”). The Planned Incident Cap Access Charge Supplement Rate applicable to the Train Operator under this contract shall be the rate set out in the column adjacent to the Planned Service Incident Cap selected by the Train Operator in the Initial Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap selected by the Train Operator in a Planned Service Incident Cap Notice issued pursuant to paragraph 9.1.2.

9.1.2 The Train Operator may change the level of Planned Service Incident Cap previously selected by it (either in the Initial Planned Service Incident Cap Notice or any subsequent Planned Service Incident Cap Notice issued pursuant to this paragraph 9.1.2) with effect from 1 April in any Financial Year by notifying Network Rail in writing of the level of Planned Service Incident Cap it wishes to apply for that Financial Year (the “**Planned Service Incident Cap Notice**”). Any such Planned Service Incident Cap Notice must be served by the Train Operator on Network Rail by no later than 6 weeks prior to 1 April in the Financial Year from which the Train Operator wishes the new level of Planned Service Incident Cap to

apply, and the Planned Service Incident Cap Access Charge Supplement Rate applicable for that and each subsequent Financial Year shall be the rate set out in the column adjacent to the Planned Service Incident Cap selected by the Train Operator in the Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap selected by the Train Operator pursuant to this paragraph 9.1.2.

**9.2 Level of Planned Service Incident Cap and Planned Service Incident Cap Access Charge Supplement Rate**

For the purposes of paragraph 9.1, the Train Operator shall select one of the following Planned Service Incident Caps:

<b>Planned Service Incident Cap</b>	<b>Planned Service Incident Cap Access Charge Supplement Rate (£ per Train Mile operated in a Period)</b> expressed in pounds sterling and rounded to two decimal places
93 minutes	0.32
147 minutes	0.28
500 minutes	0.17
1,000 minutes	0.12
5,000 minutes	0.00
No Planned Service Incident Cap	None”

5.11 For the **Supertram TAA only**, in paragraph 10 (Amendments to Appendix 1) of Schedule 8,

(a) insert after sub-paragraph 10.1 new sub-paragraph 10.1A as follows:

**“10.1A *Circumstances in which ORR may amend Appendix 1***

- (a) ORR may amend Appendix 1 of Schedule 8 during CP7 to give effect to any recalibration carried out in accordance with the approach outlined in paragraphs 3.22-3.26 of “PR23 final determination: Policy position – Schedules 4 and 8 incentives regimes”. In such event, ORR shall issue a notice to the parties setting out the amendments to be made to Appendix 1 and that they shall take effect on the date specified by ORR in its notice (save that it shall not be earlier than 1 April 2026).
- (b) Notwithstanding 10.1A(a) above, ORR may amend Appendix 1 of Schedule 8 where it considers that there has been a material change in circumstances. In such event, ORR shall issue a notice to the parties setting out the amendments to be made to Appendix 1 and the date, which shall not be retrospective, from which they shall take effect.”.

(b) in sub-paragraph 10.2:

- (i) delete the title and replace it with the following:

**“10.2 *Procedure for amendments to Appendix 1 under paragraph 10.1*”;**

- (ii) in sub-paragraph (a) after the words “The party who wishes to amend Appendix 1” insert the words “in accordance with paragraph 10.1”.

(c) in sub-paragraph 10.3, before each of the two references to “paragraph 10.2” insert the words “paragraph 10.1A or”.

5.12 For the **WCRC TAA only**, insert new paragraph 11 as follows:

**“11 *Circumstances in which ORR may amend the Planned Service Incident Cap Access Charge Supplement Rate and Appendix 8A***

11.1 ORR may amend the Planned Service Incident Cap Access Charge Supplement Rate set out in paragraph 9.2 and Appendix 8A of Schedule 8 during CP7 to give

effect to any recalibration carried out in accordance with the approach outlined in paragraphs 3.22-3.26 of “PR23 final determination: Policy position – Schedules 4 and 8 incentives regimes”. In such event, ORR shall issue a notice to the parties setting out the amendments to be made to Appendix 1 and that they shall take effect on the date specified by ORR in its notice (save that it shall not be earlier than 1 April 2026).

11.2 Notwithstanding paragraph 11.1 above, ORR may amend the Planned Service Incident Cap Access Charge Supplement Rate set out in paragraph 9.2 and Appendix 8A of Schedule 8 where it considers that there has been a material change in circumstances. In such event, ORR shall issue a notice to the parties setting out the amendments to be made and the date, which shall not be retrospective, from which they shall take effect.”

5.13 For the **NYMR TAA only**, delete paragraph 11 (CPI Uplift in relation to Network Rail Cancellation Sum (Appendix 1)) of Schedule 8, and replace with the following:

**“11 CPI Uplift in relation to Network Rail Cancellation Sum (Appendix 1)**

Any payment for Cancellation shall be at the Cancellation Sum in Appendix 1 multiplied by the below indexation figure for the Relevant Year:

$$CSI_t = \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

$CSI_t$  means the indexation figure in the Relevant Year t;

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year t-1; and

$CPI_{2022}$  means the CPI published or determined with respect to the month of November 2022.”

5.14 For the **NYMR TAA only**, insert new paragraphs 12,13 and 14 of Schedule 8 as follows:

**“12 Compensation for sustained poor performance**

**12.1 Definitions**

In this paragraph 12, unless the context otherwise requires:

**“Average Periodic Liability”** means one thirteenth of the sum of all values of NRMD Payments in each case in respect of the relevant Calculation Term;

**“Calculation Term”** means the 13 Periods (as defined in Schedule 7) immediately preceding each Periodic Liability Date;

**“Minutes Delay Payments”** means the payments in respect of Minutes Delay made under paragraphs 4 and 6;

**“NRMD Payment”** means the payment that would have been made by Network Rail to the Train Operator under paragraph 6.2 had the application of the Network Rail Cap not applied;

**“Periodic Liability Date”** means the first day of the first, fourth, seventh and eleventh Periods (as defined in Schedule 7) in each Relevant Year; and

**“SPP Threshold”** means the value specified in respect of the end of the relevant Calculation Term in Appendix 4 (as indexed in accordance with paragraph 13).

**12.2 Indemnity**

Network Rail shall indemnify the Train Operator against all Relevant Losses in accordance with this paragraph 12 if, and to the extent that, the Average Periodic Liability shows Network Rail has exceeded (that is, equalled or been worse than) the relevant SPP Threshold. For the avoidance of doubt, Relevant Losses for the purpose of providing compensation for sustained poor performance under this paragraph are to be measured in comparison to the position the Train Operator would have been in had Network Rail met the Network Rail Benchmark.

**12.3 Determination of Relevant Losses**

Subject to paragraph 12.4, the liability of Network Rail under paragraph 12.2 for sustained poor performance (SPPL) shall be determined in accordance with the following formula:

$$\text{SPPL} = \text{RL} - \text{PS}$$

where:

RL means the Train Operator's Relevant Losses arising as a direct result of Minutes Delay during the Calculation Term in each case insofar as these do not arise as a result of an incident for which the Train Operator is allocated responsibility pursuant to paragraph 3.1; and

PS means the sum of all values of Minutes Delay Payments calculated in accordance with paragraph 6.2(i) in each case subject to the applicable Network Rail Cap in respect of the relevant Calculation Term.

#### 12.4 ***Restrictions on claims by Train Operator***

The Train Operator shall not be entitled to make a claim for Relevant Losses pursuant to this paragraph 12:

- (a) if and to the extent that it has previously recovered those Relevant Losses whether under this paragraph 12 or otherwise; or
- (b) in relation to any Calculation Term or part of it that precedes the Period (as defined in Schedule 7) starting in June 2023.

### 13 **SPP Indexation**

#### 13.1 ***SPP Indexation***

Each value specified in Appendix 4, expressed in pounds sterling and rounded to two decimal places, shall be multiplied by SPP indexation figure for the Relevant Year.

#### 13.2 ***Application of SPP Indexation***



The SPP indexation figure in Relevant Year t shall be derived from the following formula:

$$SPPI_t = \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

SPPI<sub>t</sub> means the SPP indexation in Relevant Year t;

CPI<sub>t-1</sub> means the CPI published or determined with respect to the month of November in relevant year t-1; and

CPI<sub>2022</sub> means the CPI published or determined with respect to the month of November 2022.

#### **14 Circumstances in which ORR may amend Appendix 1**

14.1 ORR may amend Appendix 1 of Schedule 8 during CP7 to give effect to any recalibration carried out in accordance with the approach outlined in paragraphs 3.22-3.26 of “PR23 final determination: Policy position – Schedules 4 and 8 incentives regimes”. In such event, ORR shall issue a notice to the parties setting out the amendments to be made to Appendix 1 and that they shall take effect on the date specified by ORR in its notice (save that it shall not be earlier than 1 April 2026).

14.2 Notwithstanding paragraph 14.1 above, ORR may amend Appendix 1 of Schedule 8 where it considers that there has been a material change in circumstances. In such event, ORR shall issue a notice to the parties setting out the amendments to be made and the date, which shall not be retrospective, from which they shall take effect.”.

5.15 With the **exception** of the following Track Access Agreements:

- (i) the **Eurostar TAA**;
- (ii) the **NYMR TAA**;

(iii) the **Supertram TAA**;

(iv) the **WCRC TAA**,

delete paragraph 13 (Payment rates) of Schedule 8 to **each** Track Access Agreement, and replace it with the following:

**“13 Payment rates**

13.1 Each payment rate in columns C and E of Appendix 1, expressed in pounds sterling and rounded to two decimal places, shall be adjusted in respect of Periods in the Relevant Year t as follows:

(a) if, pursuant to paragraph 17.1 or 17.1A, amendments to columns C and/or E of Appendix 1 took effect in Relevant Year t, each value specified in Appendix 1 (as so amended) expressed in pounds sterling and rounded to two decimal places, shall be multiplied by the below indexation figure for the Relevant Year:

$$RI_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}}\right)$$

where:

$RI_t$  means the indexation figure in the Relevant Year t;

$CPI_{t-1}$  has the same meaning as set out in paragraph 9.1 above of this Schedule 8; and

$CPI_{2022}$  has the same meaning as set out in paragraph 9.1 above of this Schedule 8.

(b) in any other Relevant Year, in accordance with the following formula:

$$R_t = R_{t-1} \bullet \left(1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}}\right)$$

where:

$R_t$  is the relevant rate in the Relevant Year t;

$R_{t-1}$  is the relevant rate in the Relevant Year t-1;

$CPI_{t-1}$  has the same meaning as set out in paragraph 9.1 above of this Schedule 8; and

$CPI_{t-2}$  means the CPI published or determined with respect to the month of November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2024,  $R_{t-1}$  shall have the relevant value specified in the relevant column (either C or E) of Appendix 1.”

5.16 With the **exception** of the following Track Access Agreements:

- (i) the **Eurostar TAA**;
- (ii) the **NYMR TAA**;
- (iii) the **Supertram TAA**;
- (iv) the **WCRC TAA**,

in paragraph 15 (Notices) of Schedule 8 to **each** Track Access Agreement:

- (a) in sub-paragraph 15.1 delete the words “or fax”;
- (b) delete sub-paragraph 15.2(c) and replace it with “not used; and”.

5.17 With the **exception** of the following Track Access Agreements:

- (i) the **Eurostar TAA**;
- (ii) the **NYMR TAA**;
- (iii) the **Supertram TAA**;
- (iv) the **WCRC TAA**,

in paragraph 17 (Amendments to Appendix 1) of Schedule 8 to **each** Track Access Agreement:

- (a) insert after sub-paragraph 17.1 new sub-paragraph 17.1A as follows:

**“17.1A *Circumstances in which ORR may amend Appendix 1***

- (a) ORR may amend Appendix 1 of Schedule 8 during CP7 to give effect to any recalibration carried out in accordance with the approach outlined in paragraphs 3.22-3.26 of “PR23 final determination: Policy position – Schedules 4 and 8 incentives regimes”. In such event, ORR shall issue a notice to the parties setting out the amendments to be made to Appendix 1 and that they shall take effect on the date specified by ORR in its notice (save that it shall not be earlier than 1 April 2026).
- (b) Notwithstanding paragraph 17.1A(a) above, ORR may amend Appendix 1 of Schedule 8 where it considers that there has been a material change in circumstances. In such event, ORR shall issue a notice to the parties setting out the amendments to be made to Appendix 1 and the date, which shall not be retrospective, from which they shall take effect.”
- (b) in sub-paragraph 17.2:
- (i) delete the title and replace it with the following:
- “17.2 *Procedure for amendments to Appendix 1 under paragraph 17.1*”;**
- (ii) in sub-paragraph (a) after the words “The party who wishes to amend Appendix 1” insert the words “in accordance with paragraph 17.1”.
- (c) in sub-paragraph 17.3, before each of the two references to “paragraph 17.2” insert the words “paragraph 17.1A or”;

5.18 In the **following** Track Access Agreements:

- (i) the **East Coast TAA**;

(ii) the **Hull TAA**,

delete sub-paragraph 17.5 of Schedule 8 and replace it with the following:

**“17.5 Relationship with Appendix 3 and remainder of Schedule 8**

Amendments to Appendix 1 may require consequential amendments to Appendix 3, and therefore references in this paragraph to amendments to Appendix 1 shall include any amendments to Appendix 3 or any other relevant parts of Schedule 8 which are agreed or determined to be reasonably required in connection with those amendments to Appendix 1.”.

5.19 In Schedule 8 of the **Grand Central TAA only** insert after sub-paragraph 17.4, new sub-paragraph 17.5 as follows:

**“17.5 Relationship with Appendix 3 and remainder of Schedule 8**

Amendments to Appendix 1 may require consequential amendments to Appendix 3, and therefore references in this paragraph to amendments to Appendix 1 shall include any amendments to Appendix 3 or any other relevant parts of Schedule 8 which are agreed or determined to be reasonably required in connection with those amendments to Appendix 1.”.

5.20 In the **East Coast TAA only** delete paragraphs 18 (Compensation for sustained poor performance) and 19 (SPP Indexation) of Schedule 8.

5.21 In Schedule 8 to the **following** Track Access Agreements:

(i) the **East Coast TAA**;

(ii) the **Hull Trains TAA**,

in sub-paragraph 17A (ETCS Amendments),

(a) in sub-paragraph 17A.1(b) delete the cross reference “17A.3” and insert the cross-reference “18.3”;

(b) in sub-paragraph 17A.2(b) delete the cross reference “17A.2(a)” and insert the cross-reference “18.2(a)”;

- (c) in sub-paragraph 17A.2(c) delete the cross reference “17A.2(b)” and insert the cross-reference “18.2(b)”;
- (d) in sub-paragraph 17A.2(d)(i) delete the cross reference “17A.2(c)” and insert the cross-reference “18.2(c)”;
- (e) in sub-paragraph 17A.2(d)(ii) delete the cross reference “17A.2(a)” and insert the cross-reference “18.2(a)”;
- (f) in sub-paragraph 17A.3(a)(i) delete the cross reference “17A.2(d)” and insert the cross-reference “18.2(d)”;
- (g) in sub-paragraph 17A.3(b) delete the cross reference “17A.3(a)” and insert the cross-reference “18.3(a)”;
- (h) amend the paragraph number of paragraph 17A (ETCS Amendments), so that the paragraph becomes paragraph number 18 (ETCS Amendments).

5.22 In Schedule 8 to the **following** Track Access Agreements:

- (i) the **East Coast TAA**;
- (ii) the **Grand Central TAA**;
- (iii) the **GUT TAA**;
- (iv) the **Hull Trains TAA**,

insert new paragraphs 19 and 20 as follows:

“19 **Compensation for sustained poor performance**

19.1 ***Definitions***

In this paragraph 19, unless the context otherwise requires:

“**Average Periodic Liability**” means one thirteenth of the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of

all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term;

“**Calculation Term**” means the 13 Periods immediately preceding each Periodic Liability Date;

“**Periodic Liability Date**” means the first day of the first, fourth, seventh and eleventh Periods in each Relevant Year ignoring for these purposes any Period that commences before the Transition Date as referred to in clause 19 (where this contract includes the same); and

“**SPP Threshold**” means the value specified in respect of the end of the relevant Calculation Term in Appendix 3 (as indexed in accordance with paragraph 20).

## 19.2 **Indemnity**

Network Rail shall indemnify the Train Operator against all Relevant Losses in accordance with paragraph 19 if, and to the extent that, the Average Periodic Liability shows Network Rail has exceeded (that is, equalled or been worse than) the relevant SPP Threshold. For the avoidance of doubt, Relevant Losses for the purpose of providing compensation for sustained poor performance under this paragraph are to be measured in comparison to the position the Train Operator would have been in had Network Rail met the NRPP.

## 19.3 **Determination of Relevant Losses**

Subject to paragraph 19.4, the liability of Network Rail under paragraph 19.2 for sustained poor performance (SPPL) shall be determined in accordance with the following formula:

$$SPPL = RL - PS$$

where:

RL means the Train Operator’s Relevant Losses arising as a direct result of Minutes Delay and Cancelled Stops during the Calculation Term in each case insofar as these do not arise as a result of an incident for which the Train Operator is allocated responsibility pursuant to paragraph 5.3; and

PS means the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term.

#### 19.4 **Restrictions on claims by Train Operator**

The Train Operator shall not be entitled to make a claim for Relevant Losses pursuant to this paragraph 19:

- (a) if and to the extent that it has previously recovered those Relevant Losses whether under this paragraph 19 or otherwise; or
- (b) in relation to any Calculation Term or part of it that precedes the Transition Date as referred to in clause 19 (where this contract includes the same).

#### 20. **SPP Indexation**

##### 20.1 **SPP Indexation**

Each value specified in Appendix 3, expressed in pounds sterling and rounded to two decimal places, shall be multiplied by the SPP indexation figure for the Relevant Year.

##### 20.2 **Application of SPP Indexation**

The SPP indexation figure in Relevant Year t shall be derived from the following formula:

$$SPPI_t = \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

SPPI<sub>t</sub> means the SPP indexation in Relevant Year t;

CPI<sub>t-1</sub> has the meaning as set out in paragraph 9.1 above of this Schedule 8; and

CPI<sub>2022</sub> has the meaning as set out in paragraph 9.1 above of this Schedule 8.”.



5.23 In Schedule 8 to the **following** Track Access Agreements:

- (i) the **East Coast TAA**;
- (ii) the **Grand Central TAA**;
- (iii) the **Hull Trains TAA**;
- (iv) the **NYMR TAA**; and
- (v) the **Supertram TAA**;

delete Appendix 1, and replace it with the new Appendix 1 to Schedule 8 specific to that Track Access Agreement which is attached separately in Appendix 3 to Part 2 of Annex 3 to this Review Notice.

5.24 For the **WCRC TAA only**, delete Appendix 8A to Schedule 8 and replace it with new Appendix 8A to Schedule 8 specific to that Track Access Agreement which is attached separately in Appendix 4 to Part 2 of Annex 3 to this Review Notice.

5.25 In Schedule 8 to the **following** Track Access Agreements:

- (i) the **East Coast TAA**;
- (ii) the **Grand Central TAA**,

insert Appendix 3 (SPP Threshold) specific to that Track Access Agreement which is attached separately in Appendix 5 to Part 2 of Annex 3 to this Review Notice.

5.26 In Schedule 8 of the **Hull TAA only** delete Appendix 3 (SPP Threshold) and insert Appendix 3 (SPP Threshold) specific to that Track Access Agreement which is attached separately in Appendix 5 to Part 2 of Annex 3 to this Review Notice.

5.27 In Schedule 8 to the **NYMR TAA only** insert Appendix 4 (SPP Threshold) which is attached separately in Appendix 6 to Part 2 of Annex 3 to this Review Notice.

**APPENDIX 1 OF ANNEX 2**

**Annex A (Notification Factors) to Part 3 of Schedule 4 to the following Track Access Agreements:**

(i) the **East Coast TAA**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Service Group Description</b>	<b>Service Group Code</b>	<b>Type</b>	<b>By D-26</b>	<b>By TW-22</b>	<b>After TW-22</b>
East Coast Trains	LD01	All Trains	0.54	0.54	0.94

(ii) the **Grand Central TAA**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Service Group Description</b>	<b>Service Group Code</b>	<b>Type</b>	<b>By D-26</b>	<b>By TW-22</b>	<b>After TW-22</b>
Kings x - Sunderland	EC01	All Trains	0.55	0.55	0.94
Kings x - Bradford	EC02	All Trains	0.55	0.55	0.94

(iii) the **Hull Trains TAA**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Service Group Description</b>	<b>Service Group Code</b>	<b>Type</b>	<b>By D-26</b>	<b>By TW-22</b>	<b>After TW-22</b>
Kings Cross - Hull	PF01	All Trains	0.54	0.54	0.94

(iv) the **Supertram TAA**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Service Group Description</b>	<b>Service Group Code</b>	<b>Type</b>	<b>By D-26</b>	<b>By TW-22</b>	<b>After TW-22</b>
Tinsley North Junction – Rotherham Parkgate	SJ01	All Trains	0.60	0.60	0.88

**APPENDIX 2 OF ANNEX 2**

**Schedule 4 for the following Track Access Agreements:**

- (i) the **East Coast TAA**; and
- (ii) the **Hull Trains TAA**

**Schedule 4**

(Engineering Access Statement, Timetable Planning Rules and Restrictions of Use)

**Part 1**

(Not used)

**Part 2**

(Not used)

### Part 3

#### (Compensation for Restrictions of Use)

#### A1. Change in Effect of Schedule

A1.1 The Train Operator may serve a notice, in the form set out in Appendix 4A, informing Network Rail that this Schedule 4 shall have no effect, save for this paragraph A1 and paragraph 1.1 of Part 3 (and any further paragraphs of Part 3 necessary to give effect to paragraph 1.1 of Part 3) (an “**Opt-out Notice**”). This Opt-out Notice may only be served in the event of:

- (a) the commencement of services pursuant to the award of a franchise agreement following re-tendering of the Services;
- (b) the commencement of services pursuant to a direct award of the Services by a franchising authority;
- (c) the commencement of services following a change in identity of an operator of a franchise agreement that is not as a result of A1.1(a) and which results in a significant change in the Services;
- (d) the commencement of services following a change of franchising authority; or
- (e) ORR publishing a notice pursuant to paragraph 17.1A of Schedule 8 and ORR notifying the Train Operator that such notice will result in a significant change in accordance with paragraph 2.7(e) of ‘PR23 final determination: Policy position – Schedules 4 and 8 incentives regimes’,

each being a “Trigger Event”.

A1.2 The Train Operator must serve an Opt-out Notice given pursuant to paragraph A1.1 on Network Rail no later than two months after the date of the relevant Trigger Event. Promptly following the service of the notice the parties shall endeavour to agree the required amendment. As soon as reasonably practicable after the parties have agreed the required amendment pursuant to the Opt-out Notice, they shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment. Any amendment pursuant to the Opt-out Notice shall apply only where ORR approval is granted under section 22 of the Act and with retrospective effect from the date of the Trigger Event.

A1.3 Where an Opt-out Notice has been served and taken effect, the Train Operator may serve a subsequent notice, in the form set out in Appendix 4B, informing Network Rail that the whole of this Schedule 4 shall have effect (an “**Opt-in Notice**”). This Opt-in Notice may only be served on the occurrence of a further Trigger Event.

A1.4 The Train Operator must serve an Opt-in Notice given pursuant to paragraph A1.3 on Network Rail no later than two months after the date of the relevant Trigger Event. Promptly following the service of the notice the parties shall endeavour to agree the required amendment. As soon as reasonably practicable after the parties have agreed the required amendment pursuant to the Opt-in Notice, they shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment. Any amendment pursuant to the Opt-in Notice shall apply only where ORR approval is granted under section 22 of the Act and with retrospective effect from the date of the Trigger Event.

1. **Definitions**

1.1 **Defined terms**

In this Part 3 and its Annexes, unless the context otherwise requires:

**"Applicable Timetable"** means, in respect of any day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 22:00 hours on the day prior to that day;

**"Bi-annual Timetable"** means either of the following:

- (a) the Corresponding Day Timetable for all days in the period from and including the Principal Change Date up to but excluding the immediately following Subsidiary Change Date; or
- (b) the Corresponding Day Timetable for all days from and including the Subsidiary Change Date up to but excluding the immediately following Subsidiary Change Date or Principal Change Date, as the case may be;

**"Cancellation Minutes"** shall have the meaning ascribed to it in Schedule 8;

**"Cap"** shall have the meaning ascribed to it in Schedule 8;

**"Corresponding Day"** means, in respect of any day (the **"first day"**):

- (a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or
- (b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or
- (c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or as may be determined in accordance with paragraph 12.2;

**"Corresponding Day Timetable"** means, in relation to a Corresponding Day, the New Working Timetable or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 12.2;

**"CPI"** shall have the meaning ascribed to it in Schedule 7;

**"Day 42 Statement"** shall have the meaning ascribed to it in paragraph 13.1(a);

**"Defined Service Group Revenue"** shall have the relevant value as set out in Annex D to Part 3 of this Schedule 4;

**"Disrupted"** means:

- (a) cancelled;
- (b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and/or
- (c) starting or finishing short in comparison with the Service as timetabled in the Corresponding Day Timetable;

**"First Restriction"** shall have the meaning ascribed to it in paragraph 2.12(a)(i);

**"First Restriction Period"** shall have the meaning ascribed to it in paragraph 2.12(a)(ii);

**"Further Restriction"** shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(B);

**"High Speed Diversion"** means a situation in which a Train is diverted between successive Monitoring Points such that it travels a longer distance at a higher average speed than that normally scheduled and arrives at its destination at a time later than that specified in the New Working Timetable;

**"Monitoring Point"** shall have the meaning ascribed to it in Schedule 8;

**"Network Rail Restriction of Use"** means any Restriction of Use other than an Operator Restriction of Use;

**"Notification Factor" or "NF"** shall have the meaning ascribed to it in paragraph 9;

**"Off-Peak"** where applicable, has the meaning ascribed to it in Schedule 5;

**"Operator Restriction of Use"** means a Restriction of Use of the type referred to in paragraph 2.3;

**"Over-run"** shall have the meaning ascribed to it in paragraph 2.12(a);

**"Peak"** where applicable, has the meaning ascribed to it in Schedule 5;

**"Performance Monitoring System"** shall have the meaning ascribed to it in Schedule 8;

**"Period"** shall have the meaning ascribed to it in Schedule 8;

**"Restriction of Use"** means, in respect of any day, any difference from the normal capability of all or any part of the Routes (where the normal capability of the Routes is expressed in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26) which results in:

- (a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or
- (b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;

**"Restriction of Use Day"** means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;

**"RoU Claim Notice"** means a notice issued by either party pursuant to paragraph 2.8;

**"RoU Direct Costs"** means the aggregate amount of:

- (a) bus and taxi hire costs;
- (b) publicity costs;
- (c) train planning and diagramming costs; and
- (d) other costs directly related to the organisation and management of the Train Operator's response to a Type 2 Restriction of Use,

reasonably incurred by the Train Operator as a result of a Type 2 Restriction of Use, adjusted by:

- (i) adding any increase in RoU Variable Costs; and
- (ii) deducting any decrease in RoU Variable Costs;

**"RoU Liability"** means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 3 Restriction of Use or any Restriction(s) of Use covered by an SPD Claim;

**"RoU Losses"** means any RoU Direct Costs or RoU Liability (as applicable);

**"RoU Trigger Date"** means, in respect of any Period, the later to occur of the following:

- (a) the date on which Network Rail issues a Day 42 Statement; and
- (b) in the event of any dispute in respect of Network Rail's Day 42 Statement, the date on which such dispute is agreed or determined;

**"RoU Variable Costs"** means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over-run arising directly from changes in train mileage including maintenance, fuel or the Traction Electricity Charge and the Variable Usage Charge and the VUC Default Charge (as such terms are defined in Schedule 7);

**"SPD Claim"** has the meaning specified in paragraph 2.10(d);

**"SPD Notice"** means a notice issued by either party pursuant to paragraph 2.10(a);

**"SPD Period"** means the period of any 3 or 7 (as the case may be) consecutive Periods in which it is agreed or determined that Sustained Planned Disruption has occurred in respect of the Train Operator, together with any subsequent consecutive Period up to but excluding the first Period to occur in respect of which it is agreed or determined that the test for Sustained Planned Disruption is not satisfied in respect of the Train Operator;

**"SPD Cost Threshold No.1"** means [£●<sup>in 2023-2024 prices</sup>];

**"SPD Cost Threshold No.2"** means [£●<sup>in 2023-2024 prices</sup>];

**"SPD Revenue Threshold No.1"** means 20% of 1/13<sup>th</sup> of the relevant Defined Service Group Revenue over three consecutive Periods;

**"SPD Revenue Threshold No.2"** means 15% of 1/13<sup>th</sup> of the relevant Defined Service Group Revenue over seven consecutive Periods;

**"SPD Termination Notice"** has the meaning specified in paragraph 2.10(c);

**"Sustained Planned Disruption" or "SPD"** means a circumstance where:

- (a) the aggregate of the compensation payable in respect of a Service Group calculated in accordance with paragraph 3 for any one or more Restrictions of Use during:
  - (i) three consecutive Periods is equal to or exceeds SPD Revenue Threshold No.1; or
  - (ii) seven consecutive Periods is equal to or exceeds SPD Revenue Threshold No.2,

and that the difference between the RoU Liability calculated in accordance with paragraph 8 and the compensation calculated in accordance with paragraph 3 and paragraph 4 for such Restrictions of Use during that period would be more than £10,000; or

- (b) in respect of any one or more Restrictions of Use during:
  - (i) three consecutive Periods the difference between the Train Operator's RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator's costs calculated under paragraph 4 would be more than SPD Cost Threshold No.1; or
  - (ii) seven consecutive Periods the difference between the Train Operator's RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator's costs calculated under paragraph 4 would be more than SPD Cost Threshold No.2;

**"Service Code"** shall have the meaning ascribed to it in Schedule 8;

**"Service Group"** shall have the meaning ascribed to it in Schedule 8;

**"Train"** shall have the meaning ascribed to it in Schedule 8;

**"Train-Bus-Train Pattern"** means a situation where:

- (a) a Restriction of Use occurs on any section of track between:
  - (i) successive Monitoring Points; or
  - (ii) the station of origin and the next Monitoring Point; and
- (b) the Train Operator uses a substitute bus or other alternative road service between any pair of stations situated:
  - (i) between or including such successive Monitoring Points; or
  - (ii) at or between the station of origin and the next Monitoring Point;



**"Type 1 Restriction of Use"** means any single Restriction of Use which does not fall within the definition of Type 2 Restriction of Use or Type 3 Restriction of Use;

**"Type 2 Restriction of Use"** means:

- (a) a single Restriction of Use of more than 60 consecutive hours (excluding any part of that Restriction of Use which occurs during a Public Holiday); and
  - (b) which results in a Service being Disrupted
- but excluding any Restriction of Use which falls within the definition of Type 3 Restriction of Use;

**"Type 3 Liability Claim"** has the meaning specified in paragraph 2.7(b);

**"Type 3 Restriction of Use"** means a single Restriction of Use of more than 120 consecutive hours (including any part of that Restriction of Use which occurs during a Public Holiday);

**"Unplanned Over-run Period"** shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(A);

**"Viable Transfer Point"** a station normally served by the services operated by the Train Operator, and equipped to enable the efficient and safe transfer of trainloads of passengers to and from alternative modes of transport, and/or services operated by other Train Operators, and which the parties have agreed, and set out in Annex B, shall be used for the purpose of providing bus substitution services, and for calculating the cost of bus substitution services in accordance with the provisions of paragraph 4 "Costs compensation for Network Rail Restrictions of Use";

**"Week"** means a period commencing at 00:00:00 hours on any Saturday and ending at 23:59:59 hours on the next following Friday; and

**"White Period"** means any period during which the taking of a Restriction of Use would not result in any compensation being payable in accordance with paragraph 3.

## 1.2 ***Suspension Notices***

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of clause 3.6 and not of this Schedule 4. A Restriction of Use shall only be treated as a Restriction of Use to the extent that it involves a Restriction of Use of all or any part of the Routes which is not covered by the restriction under that Suspension Notice.

## 1.3 ***Possession***

Any reference in this contract to the term "possession", whether on its own or in composite, should be construed as "Restriction of Use" as defined in this Part 3.

## 1.4 ***White Period***

In respect of any Type 1 Restriction of Use, Type 2 Restriction of Use or Type 3 Restriction of Use, where a Restriction of Use starts before and/or ends after a White Period, the entire length of the Restriction of Use shall be taken into account when counting the cumulative total hours.

## 2. ***Application of this Part***

### 2.1 ***Entry into effect***

This Part 3 shall apply in respect of Restrictions of Use.

### 2.2 ***Applicable Engineering Access Statement and the Network Code***

The provisions of this Part 3 shall be without prejudice to:

- (a) Network Rail's right to take Restrictions of Use under or pursuant to the Applicable Engineering Access Statement;
- (b) the establishment of any amended Working Timetable under Part H of the Network Code; and
- (c) any rights pursuant to the Network Code that the Train Operator may have to challenge any decision of Network Rail.

### 2.3 ***Operator Restriction of Use***

Network Rail shall not be obliged to make any payments to the Train Operator for any one or more Restrictions of Use to the extent:

- (a) required as a result of any damage to the Network or Environmental Damage which in each case:
  - (i) arises wholly or mainly from the operations of the Train Operator or its failure to comply with its obligations under this contract; and
  - (ii) Network Rail demonstrates is in excess of fair wear and tear arising from use of the Network by the Train Operator;
- (b) requested by the Train Operator (other than for the purposes of inspection, maintenance, renewal or repair of the Network); or
- (c) required in connection with a Network Change proposed by the Train Operator under Condition G3 of the Network Code.

#### 2.4 **Network Rail payments**

Subject to paragraph 2.3, Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) in respect of a Network Rail Restriction of Use calculated in accordance with paragraphs 2.5 to 2.7 and 2.10 where applicable.

#### 2.5 **Type 1 Restriction of Use**

Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 1 Restriction of Use.

#### 2.6 **Type 2 Restriction of Use**

- (a) Except where paragraph 2.6(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 2 Restriction of Use.
- (b) If either party reasonably believes or expects that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 would exceed £10,000 then that party will be entitled to require that the costs be calculated in accordance with paragraph 6 by serving an RoU Claim Notice within the time periods set out in paragraph 2.8.
- (c) Following a request in accordance with paragraph 2.6(b), if it is agreed or determined that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 exceeds £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 6.

#### 2.7 **Type 3 Restriction of Use**

- (a) Except where paragraph 2.7(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 3 Restriction of Use.
- (b) If either party reasonably believes or expects that the difference between RoU Liability calculated in accordance with paragraph 7 and the costs and losses calculated under paragraphs 3 and 4 would exceed £10,000 then that party will be entitled to require that the costs and losses be calculated in accordance with paragraph 7 instead by serving an RoU Claim Notice within the time periods set out in paragraph 2.8 (a "**Type 3 Liability Claim**").
- (c) Following a request in accordance with paragraph 2.7(b), if it is agreed or determined that the difference between RoU Liability calculated in accordance with paragraph 7 and the costs and losses calculated under paragraphs 3 and 4 exceeds £10,000 then the relevant party shall make payments to the other

(in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7.

## 2.8 **RoU Claim Notice**

- (a) Either party wishing to make a request pursuant to paragraph 2.6(b) or paragraph 2.7(b) must notify the other that a Restriction of Use is a Type 2 Restriction of Use or a Type 3 Restriction of Use and that the circumstances in paragraph 2.6(b) or 2.7(b) (as applicable) apply within 56 days of the RoU Trigger Date relating to the Period in which that Restriction of Use commences.
- (b) The notice referred to in paragraph 2.8(a) must, if provided by the Train Operator, include details of the estimate of the RoU Direct Costs or RoU Liability (as applicable) which the Train Operator has incurred in respect of the relevant Restriction of Use.

## 2.9 **Changes to Restrictions of Use**

- (a) Where a single Restriction of Use falls within the definition of one type of Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use occurs as another type of Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been the latter type of Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).
- (b) For the purposes of paragraph 2.9(c), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of "Restriction of Use" when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.
- (c) Subject to paragraph 2.9(d), where a change to a Restriction of Use reduces the impact of the Restriction of Use and accordingly changes its type or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances. For the purposes of this paragraph 2.9(c), references to "costs" shall mean those categories of costs which the Train Operator would have been entitled to recover under this Schedule 4 for that type of Restriction of Use which the Restriction of Use was classified as prior to its change.
- (d) Notwithstanding paragraph 2.9(c), where:
  - (i) the notice served by the Train Operator under paragraph 2.9(c) is in respect of a cancellation of a Type 1 Restriction of Use that was notified to the Train Operator less than 12 weeks before the date on which that Type 1 Restriction of Use was scheduled to occur; and
  - (ii) the costs to which the Train Operator is committed or which it has already incurred prior to the cancellation of the Type 1 Restriction of Use and any costs associated with responding to that cancellation, amount to £5000 or more,

the Train Operator shall be entitled to recover those costs provided that such costs are reasonable and were properly committed or incurred in the circumstances. For the purposes of this paragraph 2.9(d), references to "costs" shall mean those categories of costs described in the definition of "RoU Direct Costs" (save that references in that definition to "Type 2 Restriction of Use" shall be deemed to refer to "Type 1 Restriction of Use").

## 2.10 **Sustained Planned Disruption**

- (a) If either party reasonably believes that a Sustained Planned Disruption has occurred then that party will be entitled to require that the costs and losses for the Restrictions of Use for the relevant services during the relevant SPD Period be calculated in accordance with paragraph 8 by serving a notice on the other (an "**SPD Notice**") in accordance with paragraph 2.10(b).
- (b) Unless otherwise agreed in writing, an SPD Notice must be served no later than the day falling 56 days after the issue of the Day 42 Statement which followed the end of the relevant SPD Period and must include a short explanation of why it reasonably believes a Sustained Planned Disruption has occurred and a statement of when the SPD Period commenced.
- (c) Following the issue of an SPD Notice, either party may serve a notice (an "**SPD Termination Notice**") stating that it reasonably believes that the relevant Sustained Planned Disruption is no longer occurring, such notice to include a short explanation of why the party serving it reasonably believes that the Sustained Planned Disruption has ceased and stating the Period in which such cessation has occurred. A party receiving an SPD Termination Notice shall within 30 days of its receipt by notice to the serving party either accept or reject the SPD Termination Notice and where it rejects the notice it shall include with its rejection notice a short explanation of why it reasonably believes the Sustained Planned Disruption is continuing. If the parties fail to reach agreement within 30 days after service of a rejection notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify the other that the dispute resolution procedure set out in paragraph 13.3 is to apply (save that references to paragraph 13.2 shall be construed as being references to this paragraph).
- (d) Following the issue of an SPD Notice the party that issued that notice must serve a claim (an "**SPD Claim**"):
  - (i) no later than the day falling 112 days after the issue of the Day 42 Statement for the last Period in the relevant SPD Period; or
  - (ii) where an SPD Period has exceeded 13 consecutive Periods in length or upon the termination or expiry of this contract, whichever comes first, unless otherwise agreed in writing, no later than the day falling 112 days after the issue of the Day 42 Statement which followed the 13th consecutive Period or the termination or expiry of this contract (as applicable),whichever is the earlier.
- (e) Provided a party has issued an SPD Notice in accordance with paragraph 2.10(b), nothing in paragraph 2.10(d) shall prevent that party from issuing more than one SPD Claim in respect of the same Sustained Planned Disruption, provided that:
  - (i) each such SPD Claim relates to a different period within the said SPD Period (so there is no double-counting); and
  - (ii) no SPD Claim can be issued after the last day for serving notice specified under paragraph 2.10(d).
- (f) An SPD Claim must include details of when and why that party reasonably believes that a Sustained Planned Disruption has occurred and in particular:
  - (i) if the claim is made by the Train Operator, such details as may reasonably be available of the RoU Liability which the Train Operator has incurred or reasonably expects to incur in respect of the relevant Restrictions of Use during the SPD Period; or
  - (ii) if the claim is made by Network Rail, the reasons why Network Rail reasonably believes that the Train Operator has been

overcompensated or may be overcompensated by more than the relevant amount.

- (g) Following the service of an SPD Claim, if and to the extent it is agreed or determined that a Sustained Planned Disruption has occurred in the period covered by the claim then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 8 in respect of the SPD Period (or where applicable the part of the SPD Period) covered by the SPD Claim.

#### 2.11 **Early notice of RoU Losses**

- (a) The parties may at any time engage in discussions on any matter likely to result in payments in respect of any RoU Losses and shall use reasonable endeavours to agree whether such RoU Losses calculated in accordance with paragraphs 6, 7 or 8 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such RoU Losses. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it thinks such RoU Losses will arise or mitigating actions should be contemplated.
- (b) Following any agreement or determination that such RoU Losses are likely to arise in connection with one or more future Restrictions of Use or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption. This may include any advance compensation for such Restriction(s) of Use to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption.
- (c) Nothing in this contract shall prevent Network Rail and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Restriction(s) of Use.
- (d) Unless otherwise agreed, the timescales for claiming RoU Losses shall still apply.

#### 2.12 **Over-runs**

- (a) For the purposes of this paragraph 2.12, an over-run ("**Over-run**") occurs where:
  - (i) there is a Restriction of Use which is not an Operator Restriction of Use (the "**First Restriction**");
  - (ii) following the end of the relevant period of difference between timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the "**First Restriction Period**"), there is either:
    - (A) a further period of at least one hour during which Services are Disrupted due to (1) any incident attributed under Schedule 8 to circumstances arising from any restriction of operation of the Network which are a consequence of the First Restriction or (2) any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable Engineering Access Statement) but excluding any act or omission by the Train Operator for which it would be allocated responsibility under this contract (the "**Unplanned Over-run Period**"); and/or
    - (B) a further Restriction of Use is taken which is at the same location as all or part of the First Restriction and directly connected with or attributable to any activities undertaken or planned to be undertaken under the First Restriction (a "**Further Restriction**"),

in each case without there being any intervening period between the First Restriction and the relevant Unplanned Over-run Period or Further Restriction, which is not either a White Period, Unplanned Over-run Period or a Further Restriction.

- (b) Where a Restriction of Use is subject to one or more Over-runs, then the entire duration from the start of the First Restriction to the end of the last Over-run in respect of the Restriction of Use shall be treated as making up a single Restriction of Use.
- (c) Where there is an Over-run which results in a Service being Disrupted which:
  - (i) is not part of either a Type 2 or Type 3 Restriction of Use;
  - (ii) lasts for more than one hour; and
  - (iii) results in the Train Operator incurring costs in the category of RoU Direct Costs in relation to the Over-run in excess of £10,000,then the Unplanned Over-run Period element of that Over-run (but not the relevant First Restriction Period or the period of any Further Restriction) shall for the purposes only of calculating RoU Direct Costs be deemed to constitute a Type 2 Restriction of Use.
- (d) For the purposes of calculating RoU Liability under paragraph 7 (when it is agreed or determined that the requirements of paragraph 2.7(c) are satisfied) or paragraph 8 when there is agreed or determined to be a Sustained Planned Disruption, the amount of the RoU Liability shall be calculated:
  - (i) including costs, direct losses and expenses (including loss of revenue and any increase in RoU Variable Costs) reasonably incurred or reasonably expected to be incurred by the Train Operator as a consequence of any Unplanned Over-run Period; and
  - (ii) offsetting any benefit as a consequence of the Unplanned Over-run Period including:
    - (A) any reduction in RoU Variable Costs;
    - (B) any payments made as result of paragraph 2.12(c); and
    - (C) any payments received by the Train Operator under Schedule 8.
- (e) This paragraph 2.12 shall not result in any Unplanned Over-run Period being subject to either revenue loss compensation for Network Rail Restrictions of Use under paragraph 3 or costs compensation for Network Rail Restrictions of Use under paragraph 4.

### **3. Revenue loss compensation for Network Rail Restrictions of Use**

#### **3.1 Basis for calculations**

For each Period and for each Service Group, Network Rail shall calculate the compensation payable in respect of all Network Rail Restrictions of Use on each Restriction of Use Day in that Period by applying, in accordance with paragraphs 3.2 and 3.3, the formulae in paragraphs 3.4, 3.5 and 3.6. For the purposes of determining for this paragraph 3 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code, provided that where a particular Train (or portion of a Train) is given a different Service Code in the New Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the New Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the New Working Timetable.

#### **3.2 Separate calculations**

In applying the formula in paragraph 3.4, Network Rail shall calculate the compensation payable separately in respect of all:

- (a) Network Rail Restrictions of Use which are taken into account in the New Working Timetable; and
- (b) Network Rail Restrictions of Use which are not so taken into account but are taken into account in the Applicable Timetable.

### 3.3 **Meaning of T1 and T2**

In paragraph 3.4:

- (a) where Network Rail is making the calculation for the purpose of paragraph 3.2(a), T1 shall mean the Corresponding Day Timetable and T2 shall mean the New Working Timetable for the Restriction of Use Day; and
- (b) where Network Rail is making the calculation for the purpose of paragraph 3.2(b), T1 shall mean the New Working Timetable for the Restriction of Use Day and T2 shall mean the Applicable Timetable for the Restriction of Use Day.

### 3.4 **Formula**

The formula referred to in paragraph 3.1 is as follows:

$$NRP = \sum((WACM + NREJT) \bullet BF \bullet NRPP \bullet NF)$$

where:

- (z) NRP is the Network Rail Payment;
- (a)  $\sum$  is the sum across all Network Rail Restrictions of Use and all Restriction of Use Days in the Period;
- (b) WACM is the weighted average of Cancellation Minutes for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$WACM = (CM - NRPP) \bullet \sum \frac{(MPW \bullet CS)}{SS}$$

where:

CM is the Cancellation Minutes for the Service Group in question specified in column F of Appendix 1 to Schedule 8;

NRPP is the Network Rail performance point for the Service Group in question specified in column B of Appendix 1 to Schedule 8;

$\sum$  is the sum across all Monitoring Points in the Service Group;

MPW is the weighting attributable to the Monitoring Point, as specified in column K of Appendix 1 to Schedule 8;

CS is the number by which the number of stops at that Monitoring Point scheduled for that day in T2 is less than SS as a result of the Network Rail Restriction of Use; and

SS is the number of stops at the Monitoring Point scheduled for that day in T1;

- (c) NREJT is the extended Journey Time as a result of a Network Rail Restriction of Use in respect of Services in that Service Group, for the Restriction of Use Day, being Services which are not cancelled, calculated according to the following formula:

$$NREJT = EJT \bullet \left(1 - \sum \frac{(MPW \bullet CS)}{SS}\right)$$

where:

$\sum$ , MPW, CS and SS have the meanings ascribed to them in paragraph 3.4(b) above; and

EJT is the extended Journey Time as a result of a Network Rail Restriction of Use in respect of Services in that Service Group calculated according to the following formula:

if no Train in that Service Group is scheduled in T2 for that day, then EJT shall equal 0;

if otherwise,

EJT is the lesser of:

- (i) the number of minutes specified as the Cap for the Service Group in column G of Appendix 1 to Schedule 8; and
- (ii)  $AJT \bullet ((u - v) / v)$

provided always that if v equals or is greater than u, EJT shall equal 0;

where:

AJT is the average Journey Time for Trains in the Service Group scheduled for that day in T1, and shall be equal to the aggregate of the Journey Times scheduled in T1 in respect of such Trains divided by the aggregate number of Journeys scheduled in T1 in respect of such Trains;

u is the average speed of Trains in the Service Group scheduled for that day in T1, and shall be equal to the aggregate of the number of miles scheduled to be run in T1 by such Trains divided by the aggregate of the Journey Times scheduled in T1 in respect of such Trains; and

v is the speed to which the average speed of Trains in the Service Group scheduled for that day in T2 is reduced as a result of the Network Rail Restrictions of Use (calculated by reference to the aggregate of the number of miles which such Trains are scheduled to run in T2 divided by the aggregate of the end to end Journey Times scheduled in T2 in respect of such Trains),

and for the purposes of this paragraph 3.4:

"Journey" means the journey of the Train scheduled in the relevant timetable from its station of origin to its destination station; provided that if a Train crosses a Service Group boundary then in respect of each Service Group the Train's station of origin and destination station shall respectively mean the station at which the Train commences that part of its journey in that Service Group and the station at which it ends that part of its journey in that Service Group; and that where any Train splits to become more than one Train then that part of the Train's journey up to the station where it splits shall be treated as one journey and each Train into which the Train splits shall be treated as making a separate journey; and

"Journey Time" shall be calculated in respect of each journey by reference to the difference in minutes between the time of departure from the station of origin and the time of arrival at the destination station;

- (d) BF is the busyness factor, as calculated for each Service Group according to the following formula:

$$BF = \sum \frac{(MPW \bullet SS)}{AS}$$

where:

AS is the average number of stops at the Monitoring Point (being the Monitoring Point referred to in the definition of MPW) per day scheduled in the Bi-annual Timetable; and

MPW and SS have the meanings ascribed to them in paragraph 3.4(b); and



- (e) NRPR is the Network Rail payment rate specified in column C of Appendix 1 to Schedule 8, as indexed according to the relevant provisions of Schedule 8.

### 3.5 **High Speed Diversions**

Where there is a High Speed Diversion and WACM, as defined in paragraph 3.4(b), has a value equal to or less than zero then the following formula shall apply:

$$ANRP = \frac{TDR_{SG}}{TDT_{SG}} \bullet (CM - NRPP) \bullet NRPR \bullet BF \bullet NF$$

where:

ANRP is the additional Network Rail payment;

TDR<sub>SG</sub> is, in respect of each Service Group and each Restriction of Use Day on which a High Speed Diversion applies, the number of Trains in the Service Group scheduled in T2 to be subject to the High Speed Diversion;

TDT<sub>SG</sub> is the total number of Trains scheduled to be run in the Service Group in T1;

T1 and T2 shall have the meanings ascribed to them in paragraph 3.3; and

CM, NRPP, NRPR and BF shall have the meanings ascribed to them in paragraph 3.4.

In such a situation, the Train Operator shall provide Network Rail with evidence, either that the High Speed Diversion has been common for the Services in question in the past or that the High Speed Diversion would arise as a result of a change in circumstances.

In default of agreement, in relation to the adequacy of such evidence, between the Train Operator and Network Rail within 28 days after the New Working Timetable is issued reflecting the relevant Network Rail Restriction of Use, the mechanism and procedure for dispute resolution set out in paragraphs 13.2, 13.3 and 13.4 shall apply.

### 3.6 **Train-Bus-Train Patterns**

If any Service Group on any day is subject to a Train-Bus-Train Pattern on account of a Network Rail Restriction of Use, and where WACM, as defined in paragraph 3.4(b), has a value equal to or less than zero, then Network Rail shall pay to the Train Operator an additional payment calculated as follows:

$$ANRP = \frac{TTS_{SG}}{TTR_{SG}} \bullet (CM - NRPP) \bullet DV \bullet NRPR \bullet BF \bullet NF$$

where:

ANRP is the additional Network Rail payment;

TTS<sub>SG</sub> is the total number of Trains scheduled in T2 to be run in the Service Group for that Restriction of Use Day to terminate at a destination other than that shown for those Trains due to a Train-Bus-Train Pattern in T1;

TTR<sub>SG</sub> is the total number of Trains scheduled to be run in the Service Group in T1;

T1 and T2 shall have the meanings ascribed to them in paragraph 3.3;

CM, NRPP, NRPR and BF shall have the meanings ascribed to them in paragraph 3.4; and

DV shall have the value of 0.125,

provided that if:

TTR<sub>SG</sub> is less than TTS<sub>SG</sub> then  $\frac{TTS_{SG}}{TTR_{SG}}$  shall be deemed to have the value of one.

In such a situation the Train Operator shall provide Network Rail with evidence, either that the Train-Bus-Train Pattern resulting from the Network Rail Restriction of Use is an arrangement that has been commonly used in the past by that Train Operator on the Services in question, or that it has arisen due to a change in circumstances.

In default of agreement, in relation to the adequacy of such evidence, between the Train Operator and Network Rail within 28 days after the New Working Timetable is issued reflecting the relevant Network Rail Restriction of Use, the mechanism and procedure for dispute resolution set out in paragraphs 13.2, 13.3 and 13.4 shall apply.

#### 4. **Costs compensation for Network Rail Restrictions of Use**

##### 4.1 **Basis for calculations**

For each Period and for each Service Group, Network Rail shall calculate the compensation payable in respect of all Network Rail Restrictions of Use on each Restriction of Use Day in that Period by applying the formulae in paragraph 4.2. For the purposes of determining for this paragraph 4 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code, provided that where a particular Train (or portion of a Train) is given a different Service Code in the New Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the New Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the New Working Timetable.

##### 4.2 **Cost compensation formula**

The formula referred to in paragraph 4.1 is as follows:

$$\text{Cost compensation} = \sum(\text{RRBC} + \text{TMC})$$

where:

- (a)  $\sum$  is the sum across all applicable Network Rail Restrictions of Use and all Restriction of Use Days in the Period;
- (b) RRBC is the rail replacement bus cost, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$\text{RRBC} = \text{EBM} \times \text{EBMPR}$$

where:

EBM is the number of estimated bus miles for the Train Operator; and

EBMPR is the payment rate per EBM, which is £[●<sup>in 2023-2024 prices</sup>]

If there is a full bus replacement

$$\text{EBM} = \text{EBMW} \times \text{FBR}_{\text{miles}}$$

If there is partial bus replacement

$$\text{EBM} = \text{EBMW} \times 0.5 \times \text{PBR}_{\text{miles}} \times \text{ITS}$$

If there is no bus replacement (as set out in Annex B to this Part 3 of Schedule 4)

$$\text{EBM} = \text{EBMW} \times 0$$

where:

EBMW is the weighting applicable to the affected section of route, as set out in Annex B to this Part 3 of Schedule 4;

FBR<sub>miles</sub> is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which full bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;

PBR<sub>miles</sub> is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which partial bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;

ITS is 1 or the percentage of trains stopping at intermediate stations for those cases where EBMW = 50%; and

- (c) TMC is the cost or saving, expressed in pence per train mile and rounded to two decimal places, resulting from train mileage change, for the Service(s) (or

part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$TMC = TM \times TMPR$$

where:

TM is the change in train mileage; and

TMPR is the payment rate per train mile, as stipulated in Annex C to this Part 3 of Schedule 4.

## 5. **Estimated bus miles change mechanism**

### 5.1 ***Circumstances in which parties agree to amend Annex B***

Either party may by notice to the other propose that Annex B be amended in accordance with this paragraph 5.

### 5.2 ***Procedure for amendments to Annex B***

- (a) The party who wishes to amend Annex B shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
  - (i) where such change relates to a forthcoming timetable change, on or before the first day of the month which falls six months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and
  - (ii) in any other case prior to the date from which it proposes such change shall have effect.
- (b) Any notice under sub-paragraph 5.2(a) shall specify as far as possible that party's proposed amendments to Annex B. Promptly following the service of any such notice the parties shall endeavour to agree whether Annex B should be amended in accordance with this paragraph 5 and if so the amendments.
- (c) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter may be referred for resolution in accordance with the ADRR. In respect of any such dispute which is referred for resolution under the ADRR the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement most recently issued by ORR.
- (d) Any amendment to Annex B shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 5, the parties shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment.
- (e) Any amendment to Annex B shall apply with effect from:
  - (i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 5.2(a)(i) applies); or
  - (ii) subject to paragraph 5.2(d) the date proposed by the party requesting the change in accordance with paragraph 5.2(a)(ii) (unless otherwise agreed by the parties or determined by the expert in relation to the change).

### 5.3 ***Costs of implementing amendment***

The party proposing the amendment to Annex B shall (subject to any determination of an expert as to costs, where a matter is referred to that expert under paragraph 5.2(c)) pay 90 percent of

costs incurred by or on behalf of the other party in assessing and implementing the amendments to Annex B, provided that those costs shall be the minimum reasonably necessary to assess and implement that amendment.

## **6. RoU Direct Costs compensation for Type 2 Restrictions of Use**

### **6.1 Compensation arrangements**

- (a) Following receipt of an RoU Claim Notice in respect of a Type 2 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Direct Costs compensation to be paid by one party to the other in respect of such Type 2 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 6.1(a) has been agreed or determined (and has been compared against any amounts calculated under paragraph 4 together with any other amounts paid or due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:
  - (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Direct Costs actually incurred by the Train Operator less any amounts calculated under paragraph 4 which have already been paid or are due for such Restriction of Use and any other amounts in respect of any RoU Direct Costs received by the Train Operator from Network Rail in respect of such Restriction of Use; or
  - (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraph 4 and the RoU Direct Costs actually incurred by the Train Operator in respect of such Restriction of Use.
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 6 and paragraph 10 to be payable in respect of any Type 2 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

## **7. RoU Liability compensation for Type 3 Restrictions of Use**

### **7.1 Compensation arrangements**

- (a) Following receipt of an RoU Claim Notice in respect of a Type 3 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by one party to the other in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts calculated under paragraphs 3 and 4 together with any other amounts paid or due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:
  - (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for such Restriction of Use and any other amounts received by the Train Operator from Network Rail in respect of such Restriction of Use; or

- (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraphs 3 and 4 and the RoU Liability actually incurred by the Train Operator in respect of such Restriction of Use.
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 7 and paragraph 10 to be payable in respect of any Type 3 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

## **8. Sustained Planned Disruption payments**

### **8.1 Payment arrangements**

- (a) Following an agreement or determination that a Sustained Planned Disruption has occurred during an SPD Period, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by one party to the other in respect of the Restrictions of Use during the relevant SPD Period and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 8.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts calculated under paragraphs 3 and 4 together with any other amounts paid or due to the Train Operator from Network Rail in respect of such Restriction of Use) then, in the event of:
  - (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for Restrictions of Use during the relevant SPD Period and any other amounts received by the Train Operator from Network Rail in respect of such Restrictions of Use; or
  - (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator for Restrictions of Use during the relevant SPD Period and the RoU Liability actually incurred by the Train Operator during the same SPD Period.
- (c) Following any agreement or determination of an amount to be paid by one party to the other in respect of a Sustained Planned Disruption that amount shall (subject to the terms of any compensation arrangements agreed in writing between the parties) be due and payable by one party to the other in accordance with paragraph 13.1.
- (d) Where a Sustained Planned Disruption applies due to a circumstance which it is agreed or determined affects a part only of the Train Operator's services (including whether by reference to geographic location or Service Group), then in agreeing or determining the RoU Liability in respect of that SPD the RoU Liability in respect of the part of the Train Operator's services not affected by that circumstance shall (unless otherwise proven) be presumed to be equal to the payments made under paragraphs 3 and 4 of this Schedule 4 in respect of those other services.

## **9. Notification Factors**

### **9.1 Early notification**

The Notification Factor in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column C of Annex A to this Part 3 if and to the extent that:

- (a) the Network Rail Restriction of Use is reflected in the New Working Timetable; or
- (b)
  - (i) details of the Network Rail Restriction of Use are notified to the Train Operator on or before D-26 for the Timetable Period in respect of the Restriction of Use Day but, at the request of the Train Operator (as accepted by Network Rail), are not reflected in the New Working Timetable; and
  - (ii) subject to paragraph 9.1(b)(iii), the Network Rail Restriction of Use is reflected in the Working Timetable as set out in the Performance Monitoring System at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
  - (iii) where paragraph 9.1(b)(ii) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9 of the Network Code, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

#### 9.2 **Notification by TW-22**

The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column D of Annex A to this Part 3 if and to the extent that paragraph 9.1 does not apply, and:

- (a) details of the Network Rail Restriction of Use are notified to the Train Operator by TW-22; and
- (b)
  - (i) the Network Rail Restriction of Use is reflected in the Working Timetable as set out in the Performance Monitoring System at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
  - (ii) where paragraph 9.2(b)(i) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9 of the Network Code, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

#### 9.3 **Late Notification**

The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column E of Annex A to this Part 3 if and to the extent paragraphs 9.1 and 9.2 do not apply but the Network Rail Restriction of Use is reflected in the Applicable Timetable, and includes where paragraph 9.1(b) or paragraph 9.2 would have been applicable but for a failure by Network Rail to fulfil the terms of paragraph 9.1(b)(ii) or paragraph 9.2(b)(i) respectively, notwithstanding the Train Operator having given a revised Access Proposal in accordance with Condition D3.4.9 of the Network Code.

#### 10. **Dispute resolution**

10.1 If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.6(c), 2.7(c), 2.10(g), 2.11, 6, 7 or 8, or fail to reach agreement on the amount of costs notified under paragraph 2.9(c):

- (a) within 6 months, or such other period as the parties may agree, of the issue of the relevant notice (as set out in paragraph 2.6(b), 2.7(b), 2.9(c), 2.10(d), 6.1(a) or 7.1(a) or once discussions or negotiations have commenced (as required under 2.11 and

8.1(a)) (as applicable), the parties shall meet to discuss outstanding aspects of the claim, which may include but is not limited to the provision of information or points in dispute;

(b) if no later than 28 days after the date of the meeting referred to in paragraph 10.1(a), the claim is not resolved or withdrawn:

- (i) the parties shall agree a timetable for a subsequent meeting; or
- (ii) either party may refer the matter for resolution in accordance with the ADRR.

10.2 Notwithstanding paragraph 10.1, either party may refer the matter for resolution in accordance with the ADRR at any time following the issue of the relevant notice(s) in accordance with paragraph 2.6(b), 2.7(b), 2.9(c), 2.10(d), 6.1(a) or 7.1(a) and/or once the discussions or negotiations have commenced in accordance with paragraph 2.11 or 8.1(a).

#### 11. **Schedule 8 application**

If and to the extent that a Network Rail Restriction of Use is not reflected in the Applicable Timetable for the Restriction of Use Day, the amount of compensation (if any) shall be calculated in accordance with Schedule 8 (to the exclusion of any compensation under this Schedule 4 except as provided in paragraph 2.12).

#### 12. **Restriction of Use Day and Corresponding Day**

##### 12.1 **Information provision**

In respect of any Restriction of Use Day for which compensation may be payable in a Period under paragraphs 3 and 4, Network Rail shall accurately record such information as it uses and as may properly and reasonably be required to make the calculations required under paragraphs 3 and 4 (including the determination of NF and the relevant version of the Working Timetable referred to in paragraph 9.1(b)(ii) or paragraph 9.2(b)(i)). Network Rail shall maintain that information until the compensation payable under paragraphs 3 and 4 in respect of that Period is finally agreed or determined and provide such information to the Train Operator at its reasonable request.

##### 12.2 **Corresponding Day**

- (a) If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition "Corresponding Day" and the parties have failed to reach agreement on the Corresponding Day by the date falling eight Weeks before the relevant Timetable Change Date then either party may require that the identification of the Corresponding Day be resolved as a dispute in accordance with the ADRR.
- (b) The parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum's remit shall be to:
  - (i) reach a decision which is fair and reasonable; and
  - (ii) identify the day in either any version of the Working Timetable or any version of the New Working Timetable on or before D-26 in either case which has been produced in accordance with the Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable Period) but for Restrictions of Use reflected in the New Working Timetable for the first day; or
  - (iii) where a Corresponding Day cannot be identified in accordance with paragraph 12.2(b)(ii) above, determine a notional Corresponding Day. The relevant ADRR Forum may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.

### 13. **Payment procedures**

#### 13.1 **Network Rail Restrictions of Use**

- (a) Within 14 days after the end of each Period, Network Rail shall provide to the Train Operator a statement (the "**Day 42 Statement**") showing:
  - (i) all Network Rail Restrictions of Use taken during that Period;
  - (ii) any compensation calculated in accordance with paragraphs 3 and/or 4 payable by Network Rail in respect of the Network Rail Restrictions of Use identified; and
  - (iii) following any agreement or determination in the Period referred to in paragraph 13.1(a) of any RoU Losses in respect of a Type 2 Restriction of Use, a Type 3 Restriction of Use or a Sustained Planned Disruption (as applicable), any payment to be made by one party to the other,in sufficient detail to enable the Train Operator to make an informed assessment thereof.
- (b) The aggregate liabilities of Network Rail and the Train Operator, in respect of any and all compensation for which either is liable to the other under this Part 3 and under Part 5 in respect of each Period shall, to the extent that such compensation is not under dispute, be set off against each other and the balance (if any) shall be payable by Network Rail or the Train Operator, as the case may be, within 35 days after the end of that Period.

#### 13.2 **Disputes**

Within 15 days of receipt of a statement from Network Rail under paragraph 13.1, the Train Operator shall notify Network Rail of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.

#### 13.3 **Dispute resolution**

The procedure for resolving disputes notified under paragraph 13.2 shall be as follows:

- (a) within seven days of service of any notice under paragraph 13.2, the parties shall meet to discuss the disputed aspects of the statement with a view to resolving all disputes in good faith;
- (b) if, within seven days of that meeting (the "**first meeting**"), the parties are for any reason still unable to agree the disputed aspects of the statement, each party shall promptly (and in any event within seven days) prepare a written summary of the disputed aspects of the statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;
- (c) within 28 days of the first meeting, the senior officers shall meet with a view to resolving all disputes;
- (d) if no resolution results within 14 days of that meeting, either party may refer the matter for resolution in accordance with the ADRR.

#### 13.4 **Payments in the event of a dispute**

Where any amount under paragraph 13.1 is in dispute:

- (a) the undisputed amount shall be paid in accordance with paragraph 13.1;
- (b) the disputed amount shall be paid within 28 days after the dispute is resolved or determined to the extent that the amount in dispute is adjudged or resolved to be payable; and
- (c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.

### 14. **Indexation**



14.1 The indexation formula applicable to this paragraph 14 is:

$$RI_t = \left(1 + \frac{CPI_{t-1} - CPI_{2022}}{CPI_{2022}}\right)$$

where:

$RI_t$  is the relevant indexation value in the Relevant Year t;

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year t-1; and

$CPI_{2022}$  means the CPI published or determined with respect to the month of November 2022.

14.2 Each of values for EBMPR (defined and specified in paragraph 4.2), TMPR (defined in paragraph 4.2 and specified in Annex C to this Part 3 of Schedule 4) and Defined Service Group Revenues (specified in Annex D to this Part 3 of Schedule 4) shall be adjusted in respect of Periods in Relevant Year t by multiplying them by the relevant indexation value, as set out in paragraph 14.1.

14.3 Each of the SPD Cost Threshold No.1 and SPD Cost Threshold No.2, as set out in paragraph 1.1 of this Schedule 4, shall be adjusted in respect of Periods in Relevant Year t by multiplying them by the relevant indexation value, as set out in paragraph 14.1.

15. **Circumstances in which ORR may amend Schedule 4**

15.1 Where there has been a change in Appendix 1 to Schedule 8 arising as a result of a notice issued under paragraph 17.1A of Schedule 8 that ORR considers requires an amendment to any of the following:

- (a) the definition of “SPD Revenue Threshold 1” and “SPD Revenue Threshold 2” in Part 3 of Schedule 4;
- (b) Annex A to Part 3 of Schedule 4;
- (c) Annex D to Part 3 of Schedule 4;
- (d) Part 5 of Schedule 4;
- (e) any other part of Schedule 4 as a consequence of any amendments required under (a) – (d) above,

it may amend the relevant part of Schedule 4.

15.2 Where paragraph 15.1 applies, ORR may issue a notice to the parties setting out the amendments to be made and the date from which they shall take effect.

**Annex A**  
**to Part 3 of Schedule 4**  
Notification Factors

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Service Group Description</b>	<b>Service Group Code</b>	<b>Type</b>	<b>By D-26</b>	<b>By TW-22</b>	<b>After TW-22</b>

**Annex B**  
**to Part 3 of Schedule 4**  
 Lookup Table for EBM Weights

Viable Transfer Point (VTP)	Viable Transfer Point (VTP)	Via	Applicable Infrastructure Rules	Other Operating Rules	S4CS Code	Description of Possession Response	Comments	Service Group	% Applicable	FULL Bus Replacement 100%				PARTIAL Bus Replacement (50% x X%)					No Bus Replacement (%)	EBM Total
										From	To	Miles	Trains	From	To	Miles	Trains	% Trains		
[Description]																				

[Insert map]

**Annex C**

**to Part 3 of Schedule 4**

Payment Rate per train mile

<b>Service Group</b>	<b>Description</b>	<b>Compensation Rate</b>	<b>Total Train Cost per Mile (Pence)</b>

**Annex D**  
**to Part 3 of Schedule 4**  
Defined Service Group Revenue

<b>Service Group</b>	<b>Description</b>	<b>Defined Service Group Revenue</b>

#### Part 4

(Not Used)

#### Part 5

(Access Charge Supplement for Restrictions of Use)

1. The Train Operator shall pay or procure the payment to Network Rail of an Access Charge Supplement for Restrictions of Use (ACSRU) in respect of each Period equal to 1/13 of the amount specified below (as indexed in accordance with paragraph 2) in respect of the Relevant Year commencing 1 April in which the first day of the relevant Period falls:

Year	£
2024-2025	[•]
2025-2026	[•]
2026-2027	[•]
2027-2028	[•]
2028-2029	[•]

Each such payment shall be made within 35 days after the end of the relevant Period.

2. Each such amount specified in paragraph 1 shall be adjusted in respect of payments made relating to Periods in the Relevant Year  $t$  in accordance with the following formula:

$$ACSRU_{pt} = ACSRU_t \bullet \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

$ACSRU_{pt}$  is the actual amount, expressed in pounds sterling and rounded to zero decimal places, payable in the Relevant Year  $t$ ;

$ACSRU_t$  is the relevant amount specified in paragraph 1 of this Part 5 for the Relevant Year  $t$  (before indexation);

$CPI_{t-1}$  has the meaning set out in paragraph 14.1 of Part 3 of this Schedule 4; and

$CPI_{2022}$  means the CPI published or determined with respect to the month of November 2022.

## Appendix 4A

### Opt-out Notice

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Network Rail Infrastructure Limited

[Enter address specified in paragraph 1 of Schedule 1 to the contract]

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

#### **Opt-out from the Schedule 4 Restrictions of Use provisions**

This is an Opt-out Notice in respect of Schedule 4 of the track access contract between Network Rail Infrastructure Limited and [Enter train operator name here], dated [insert date of track access contract] ("the contract").

[Enter train operator name here] hereby exercises its right to opt out of the provisions of Schedule 4, pursuant to paragraph A1.1 of Part 3 to Schedule 4 to the contract.

This notice does not apply to paragraphs A1 and 1.1 of Part 3 of Schedule 4, and any further paragraphs of Part 3 necessary to give effect to paragraph 1.1 of Part 3.

{I have sent a copy of this notice to [any other person at Network Rail entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].}

Yours faithfully

**[Name of train operator representative]**

## **Appendix 4B**

### **Opt-in Notice**

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Network Rail Infrastructure Limited

[Enter address specified in paragraph 1 of Schedule 1 to the contract]

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

#### **Opt-in to the Schedule 4 Restrictions of Use provisions**

This is an Opt-in Notice in respect of Schedule 4 of the track access contract between Network Rail Infrastructure Limited and [Enter train operator name here], dated [insert date of track access contract] ("the contract").

[Enter train operator name here] hereby exercises its right to opt in to all of the Schedule 4 provisions, pursuant to paragraph A1.3 of Part 3 to Schedule 4 to the contract.

{I have sent a copy of this notice to [any other person at Network Rail entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].}

Yours faithfully

**[Name of train operator representative]**



## ANNEX 3

### BESPOKE AMENDMENTS

#### PART 1 (MODIFICATIONS TO STANDARD AMENDMENTS)

***Explanatory Note:***

*This Annex 3 sets out the modifications which need to be made to the standard amendments set out in Annex 2 to this Review Notice, in each case required in order to give effect to ORR's conclusions on the Review in the Track Access Agreements listed below.*

*In relation to each Track Access Agreement which is listed in Part 1 of this Annex 3, ORR proposes that the amendments set out in Annex 2 to this Review Notice will be made to that Track Access Agreement, modified to the extent specified in the paragraph or paragraphs of Part 1 of this Annex 3 relating to that Track Access Agreement.*

## APPENDIX 1 TO PART 1 OF ANNEX 3

**Each** Track Access Agreement referred to in this Annex 3, in each case as amended in accordance with Annex 2, shall be further amended on the terms set out in this Part 1 of Annex 3.

### 1 Definitions of SPD Cost Threshold No.1 and SPD Cost Threshold No.2

1.1 In **each** of the following Track Access Agreements:

- (i) the **East Coast TAA**;
- (ii) the **Grand Central TAA**;
- (iii) the **GUT TAA**;
- (iv) the **Hull Trains TAA**; and
- (v) the **Supertram TAA**,

delete the definitions of “SPD Cost Threshold No.1” and “SPD Cost Threshold No.2” in sub-paragraph 1.1 (Defined terms) of Part 3 to Schedule 4, and replace them with the following:

- (a) “**“SPD Cost Threshold No.1”** means £423,998”; and
- (b) “**“SPD Cost Threshold No.2”** means £847,996”.

**2 Paragraph 4.2 (Notional cost calculation formula) of Part 3 to Schedule 4**

2.1 In **each** of the following Track Access Agreements:

- (i) the **East Coast TAA**;
- (ii) the **Grand Central TAA**;
- (iii) the **GUT TAA**;
- (iv) the **Hull Trains TAA**; and
- (v) the **Supertram TAA**,

delete the definition of EBMPR in sub-paragraph 4.2(b) (Cost Compensation Formula) of Part 3 of Schedule 4, and replace it with the following:

“EBMPR is the payment rate per EBM, which is £13.30.”

## APPENDIX 2 TO PART 1 OF ANNEX 3

### Part 5 (Access Charge Supplement for Restriction of Use) of Schedule 4

In Part 5 (Access Charge Supplement for Restriction of Use) of Schedule 4 to each of the **following** Track Access Agreements:

- (ii) the **East Coast TAA**;
- (ii) the **Hull Trains TAA**,

complete the empty square brackets shown in the list of years and payment sums in paragraph 1 of that Part 5 set out in Appendix 2 of Annex 2 to this Review Notice with the payment sums set out below specific to that Train Operator's Track Access Agreement:

1. In the **East Coast TAA**:

Year	£
2024-25	1,316,966
2025-26	1,270,823
2026-27	1,256,218
2027-28	1,197,126
2028-29	994,938

2. In the **Hull Trains TAA**:

Year	£
2024-25	1,457,318
2025-26	1,497,410
2026-27	1,481,522
2027-28	1,412,863
2028-29	1,167,948

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## ANNEX 3

### PART 2 (CONFIDENTIAL INFORMATION)

***Explanatory Note:***

*As explained above, the confidential information is attached to this Review Notice in the following pages. Copies will be sent only to the parties to the relevant Track Access Agreement, the Secretary of State for Transport, the Scottish Ministers and the Treasury and, if appropriate, any relevant parties listed in Part 2 of Annex 1 to this Review Notice. The publication of that information would or might, in the opinion of ORR, seriously and prejudicially affect the interest of each Train Operator and/or Network Rail for the purpose of section 71(2) of the Act, and it is therefore not being published.*

## APPENDIX 1 TO PART 2 OF ANNEX 3

**Annex C (Payment Rate per train mile) to Part 3 of Schedule 4 to the following Track Access Agreements:**

- (i) the **East Coast TAA**;
- (ii) the **Grand Central TAA**;
- (iii) the **Hull Trains TAA**;
- (iv) the **Supertram TAA**.

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**APPENDIX 2 TO PART 2 OF ANNEX 3**

**Annex D (Defined Service Group Revenue) to Part 3 of Schedule 4 to the following Track Access Agreements:**

- (i) the **East Coast TAA**;
- (ii) the **Grand Central TAA**;
- (iii) the **Hull Trains TAA**;
- (iv) the **Supertram TAA**.

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**APPENDIX 3 TO PART 2 OF ANNEX 3**

**Appendix 1 of Schedule 8 for each of the following Track Access Agreements:**

- (i) the **East Coast TAA**;
- (ii) the **Grand Central TAA**;
- (ii) the **Hull Trains TAA**;
- (iv) the **NYMR TAA**;
- (v) the **Supertram TAA**,

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**APPENDIX 4 TO PART 2 OF ANNEX 3**

**Appendix 8A of Schedule 8 to the WCRC TAA only**

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**APPENDIX 5 TO PART 2 OF ANNEX 3**

**Appendix 3 (SPP Threshold) of Schedule 8 to each of the following Track Access Agreements:**

- (i) the **East Coast TAA**;
- (ii) the **Grand Central TAA**;
- (iii) the **Hull Trains TAA**,

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**APPENDIX 6 TO PART 2 OF ANNEX 3**

**Appendix 4 (SPP Threshold) of Schedule 8 to the NYMR TAA only**

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